

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
COMMONWEALTH EDISON COMPANY, )  
 ) No. 07-0566  
Proposed general increase in )  
electric rates. )  
Chicago, Illinois  
May 2nd, 2008

Met pursuant to notice at 9:00 a.m.

BEFORE:  
MR. TERRENCE HILLIARD and MS. LESLIE HAYNES,  
Administrative Law Judge.

1 APPEARANCES:

2 MR. CARMEN FOSCO  
MR. JOHN FEELEY

3 MR. ARSHIA JAVAHERIAN  
160 North LaSalle Street, Suite C-800  
4 Chicago, Illinois 60601  
appearing for Staff of the ICC;

5 EIMER STAHL KLEVORN & SOLBERG, LLP

6 MR. DAVID STAHL  
MR. ADAM OYEBANJI

7 224 South Michigan Avenue, Suite 1100  
Chicago, Illinois 60604

8 -and-

9 MS. ANASTASIA M. POLEK-O'BRIEN  
MR. DARRYL BRADFORD

10 10 South Dearborn Street  
Chicago, Illinois 60603

11 -and-

12 FOLEY & LARDNER  
MR. E. GLENN RIPPIE

13 MR. JOHN P. RATNASWAMY  
321 North Clark Street, Suite 2800  
Chicago, Illinois 60610  
appearing for Commonwealth Edison;

14 MS. ANNE McKIBBIN

15 MR. JULIE SODERNA  
208 South LaSalle Street, Suite 1760  
16 Chicago, Illinois 60604  
appearing for the Citizens Utility  
17 Board;

18 LUEDERS, ROBERTSON & KONZEN  
MR. ERIC ROBERTSON

19 MR. RYAN ROBERTSON  
1939 Delmar Avenue  
20 Granite City, Illinois 62040

21 -and-

22 MR. CONRAD R. REDDICK  
1015 Crest Street  
Wheaton, Illinois 60187  
appearing for IIEC;

1 APPEARANCES (Cont'd):

2 LAW OFFICES OF MICHAEL A. MUNSON  
MR. MICHAEL A. MUNSON  
3 123 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
4 appearing for BOMA;

5 MR. RICHARD C. BALOUGH  
53 West Jackson Boulevard, Suite 936  
6 Chicago, Illinois 60604  
appearing for Chicago Transit  
7 Authority;

8 ILLINOIS ATTORNEY GENERAL'S OFFICE  
MS. JANICE DALE  
9 MS. KAREN LUSSON  
MS. KRISTIN MUNSCH  
10 100 West Randolph Street, 11th Floor  
Chicago, Illinois 60601  
11 appearing for the People of the State  
of Illinois;

12 DLA PIPER US LLP  
13 MR. CHRISTOPHER J. TOWNSEND  
MR. CHRISTOPHER N. SKEY  
14 203 North LaSalle Street, Suite 1900  
Chicago, Illinois 60601  
15 appearing for REACT;

16 ROWLAND & MOORE, LLP  
MR. STEPHEN J. MOORE  
17 MR. KEVIN D. RHODA  
200 West Superior Street, Suite 400  
18 Chicago, Illinois 60610  
appearing for Retail Energy Supply  
19 Association;

20 JENKINS AT LAW, LLC  
MR. ALAN R. JENKINS  
21 2265 Roswell Road, Suite 100  
Marietta, Georgia 30062  
22 appearing for the Commercial Group;

1 APPEARANCES (Cont'd):

2 JOHN B. COFFMAN, LLC  
3 MR. JOHN B. COFFMAN  
4 871 Tuxedo Boulevard  
5 St. Louis, Missouri 63119  
6 appearing for AARP;

7 OFFICE OF THE GENERAL COUNSEL  
8 MR. ARTHUR PERRY BRUDER  
9 1000 Independence Avenue Southwest  
10 Washington, DC 20585  
11 appearing for the United States  
12 Department of Energy;

13 COMMONWEALTH EDISON COMPANY  
14 MR. MICHAEL GUERRA  
15 One Financial Place  
16 440 South LaSalle Street  
17 Chicago, Illinois 60605.  
18

19 SULLIVAN REPORTING COMPANY, by  
20 Barbara A. Perkovich, CSR  
21 Steven T. Stefanik, CSR  
22 Alisa Sawka, CSR

1		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>		<u>Re-</u>	<u>Re-</u>	<u>By</u>		
3	EDWARD BODMER	1474	1477		1519	1528			
4					1532				
5	EDWARD C. BODMER	1535	1536		1557	1559			
6	PETER LAZARE	1564	1570						
7			1576						
8			1590						
9			1607						
10	RICHARD BAUDINO	1627	1628		1658	1659			
11			1636						
12			1641						
13			1655						
14	DAVID VITE	1661	1663		1685				
15			1677						
16			1681						
17									
18									
19									
20									
21									
22									

	<u>E X H I B I T S</u>		
	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
3	CTA		
	#1.0,1.01,1.02,1.03		
4	3.0 & 5.0		1464
	CROSS#1	1670	1680
5	METRA/CTA		
	#1.0,2.0,3.0 & 4.0		1466
6	DOE		
	#1.0,1.1,1.2,2.0		
7	2.1,2.2 & 2.3		1467
	IIEC		
8	#3.0,3.1,3.2,3.3		
	7.0,7.1,7.2 & 8.0		1469
9	2-3	1616	
	STAFF		
10	#3.0,16.0,3.1,16.1		
	4.0,17.0,4.1,17.10		
11	7.0&7.1		1471
	5,6,11,&18		1569
12	AARP		
	#1.0,2.0,2.1,2.2		1472
13	KROEGER		
	#1.0,2.0,2.1&3.0		1773
14	CITY		
	1.0,1.1 & 2.0		1477
15	1	1560	1561
	COMED		
16	#12	1499	1562
	#47	1626	
17	REACT		
	#2&6		1536
18	#19	1647	
	IIC		
19	#2&3		1626
	CG		
20	#2&2.1		1628
	#1&1.1		1662
21			
22			

1           MR. BALOUGH: Good morning, your Honor,  
2 Richard Balough on behalf of the CTA. At this time  
3 the CTA would offer CTA Exhibit 1.0, which is the  
4 direct filed testimony of Dennis Anosike, which was  
5 filed on e-docket on February 11th, 2008. With  
6 Exhibit 1.0 are Attachments Exhibit 1.01, 1.02, and  
7 1.03.

8           And then we have CTA Exhibit 3.0, which  
9 is the rebuttal testimony of Dennis Anosike that  
10 was filed on e-docket on April 8th, 2008. CTA  
11 Exhibit 5.0, which was the affidavit of Dennis  
12 Anosike filed on e-docket on April 30th, 2008. We  
13 would offer those exhibits at this time. JUDGE  
14 HILLIARD: Objections? Hearing no objections, the  
15 exhibits described by counsel and the attachments  
16 will be admitted in the record.

17                       (Whereupon, CTA  
18 Exhibits Nos. 1.0, 1.01, 1.02,  
19 1.03, 3.0 and 5.0 were  
20 admitted into evidence as  
21 of this date having been  
22 previously filed on e-docket.)

1 JUDGE HILLIARD: Does anybody else have  
2 affidavits?

3 MR. BALOUGH: Your Honor, I have the joint  
4 exhibits, they are designated as Metra/CTA Joint  
5 Exhibit 1.0, which is the direct testimony of James  
6 Bachman, filed on e-docket on February 11th, 2008.  
7 And then we have Metra/CTA Joint Exhibit 2.0, which  
8 is the supplemental direct testimony of James  
9 Bachman, filed on e-docket on February 26th, 2008.  
10 And Metra/CTA Joint Exhibit 3.0, which is the  
11 rebuttal testimony of James Bachman filed on  
12 e-docket on April 18th, 2008.

13 And, your Honor, I would also at this  
14 time, there is a Metra/CTA Joint Exhibit 4.0, which  
15 will be his affidavit, which we will file on  
16 e-docket as a late filed exhibit.

17 JUDGE HILLIARD: Is that all?

18 MR. BALOUGH: That is all.

19 JUDGE HILLIARD: And you are moving those for  
20 admission into the record?

21 MR. BALOUGH: Yes, your Honor.

22 JUDGE HILLIARD: Are there any objections?



1 Hearing no objections the joint Metra/CTA exhibits  
2 and affidavit will be admitted into the record.

3 (Whereupon, Metra/CTA Joint  
4 Exhibits Nos. 1.0, 2.0, 3.0 and  
5 4.0 were admitted into evidence  
6 as of this date have been  
7 previously filed on e-docket.)

8 JUDGE HILLIARD: Next, please.

9 MR. BRUDER: I am Arthur Perry Bruder of the  
10 United States Department of Energy. As you know,  
11 the Department of Energy's witness Dr. Dale Swan  
12 presented two pieces of testimony in this  
13 proceeding, direct and rebuttal testimony. They  
14 consist of first DOE Exhibit 1.0, that is 34 pages  
15 of questions and answers, a resume and two  
16 schedules marked DOE Exhibits 1.1 and 1.2.

17 Second is DOE Exhibit 2.0, that is 29  
18 pages of questions and answers and three schedules  
19 marked DOE Exhibits 2.1, 2.2 and 2.3. As you know,  
20 the parties have waived cross examination of  
21 Dr. Swan and he has not appeared. I have here two  
22 sworn affidavits of Dr. Swan's attesting to the

1 truth and correctness of his testimony and  
2 exhibits. I'm offering copies of the affidavits to  
3 all parties and to the court reporter. And I ask  
4 that on that basis Dr. Swan's testimony and  
5 exhibits, as I've described, be admitted to the  
6 record in this proceeding.

7 JUDGE HILLIARD: Any objections? Hearing no  
8 objections, the DOE exhibits and affidavit are  
9 admitted in the record.

10 (Whereupon, DOE  
11 Exhibits Nos. 1.0, 1.1, 1.2, 2.0,  
12 2.1, 2.2 and 2.3 were  
13 admitted into evidence as  
14 of this date having been  
15 previously filed on e-docket.)

16 JUDGE HAYNES: Is 2.0 the rebuttal testimony?

17 MR. BRUDER: Yes, it is.

18 JUDGE HAYNES: So will the affidavit be 3.0?

19 MR. BRUDER: I hadn't considered the affidavit  
20 will be an exhibit. If that's what it needs to be  
21 then certainly, yes.

22 JUDGE HILLIARD: And if you are not filing

1 e-docket, you need to give three copies of the  
2 affidavit and whatever exhibit it is to the court  
3 reporter.

4 MR. BRUDER: Will do, thank you.

5 JUDGE HILLIARD: Anybody else?

6 MR. ROBERTSON: Yes, Eric Robertson on behalf of  
7 the Illinois Industrial Energy Consumers to move  
8 the admission, pursuant to affidavit, of David L.  
9 Stowe, presented IIEC Exhibit 3.0, corrected and  
10 corrected exhibits 3.1, 3.2, and 3.3 filed on  
11 e-docket on February 26, '08. And his corrected  
12 rebuttal testimony, which is IIC Exhibit 6.0C, as  
13 in Charlie, containing exhibits 6.1 through 6. --  
14 I'm sorry, strike that, that isn't Mr. Stowe.

15 It is IIC Exhibit 7.0, the rebuttal  
16 testimony of Mr. Stowe and Exhibits 7.1 and 7.2,  
17 attached thereto, which were filed on e-docket on  
18 April 8, 2008. And the affidavit of Mr. Stowe,  
19 which should be marked as IIC Exhibit 8.0, filed on  
20 e-docket on April 30, 2008.

21 JUDGE HILLIARD: You are moving those into  
22 admission?

1 MR. ROBERTSON: I do move the admission.

2 JUDGE HILLIARD: And are there any objections?

3 Hearing no objections, the exhibits and affidavit  
4 of Mr. Stowe be admitted in the record.

5 (Whereupon, IIEC Exhibits  
6 Nos. 3.0, 3.1, 3.2, 3.3,  
7 7.0, 7.1, 7.2 and 8.0 were  
8 admitted into evidence as  
9 of this date having been  
10 previously filed on e-docket.)

11 JUDGE HILLIARD: Staff.

12 MR. FEELEY: Staff has three witnesses whose  
13 testimony would like to go in by avenue, first is  
14 Mike Ostrander, his direct testimony is marked for  
15 identification as ICC Staff Exhibit 3.0 and  
16 attached Schedules 3.1 to 3.6, was filed on  
17 e-docket on February 13th, 2008. Next is his  
18 rebuttal testimony marked for identification as  
19 16.0 and has attached Schedules 16.1 to 16.2. It's  
20 filed on e-docket on April 8th, 2008.

21 Next is Mr. Ostrander's affidavit for  
22 his direct testimony is marked for identification

1 as Exhibit 3.1, filed on April 29th, next is his  
2 affidavit for his rebuttal marked for  
3 identification as 16.1, also filed on April 29th,  
4 2008.

5 JUDGE HAYNES: I thought that they already had  
6 Exhibits 3.1 and 16.1?

7 MR. FEELEY: He has schedules that are attached  
8 to Exhibit 16.0, but this is Exhibit 16.1.

9 JUDGE HAYNES: Okay. And there is --

10 MR. FEELEY: And the same goes for -- he has a  
11 schedule 3.1, but that's attached to Exhibit 3.0.

12 JUDGE HAYNES: Thank you.

13 MR. FEELEY: Next is staff witness Michael  
14 McNally, whose direct testimony corrected is marked  
15 for identification as 4.0, corrected, and attached  
16 Schedules 4.11 to 4.10. It's filed on e-docket on  
17 April 15th, 2008. Next is his rebuttal testimony  
18 marked for identification as 17.0 and has attached  
19 Schedules 17.1 and 17.2, filed on e-docket on  
20 April 8th.

21 Next is Mr. McNally's affidavit for his  
22 direct testimony, marked for identification as

1 Exhibit 4.1, filed on May 1st. Next is his  
2 affidavit for his rebuttal testimony marked for  
3 identification as 17.1, filed on May 1st.

4 And finally we have staff witness Qin  
5 Liu, her direct testimony is marked for  
6 identification as Staff Exhibit 7.0, it's filed on  
7 e-docket on February 13th and her affidavit for  
8 direct is marked for identification as 7.1 filed on  
9 April 29th.

10 Staff would move to admit all those  
11 exhibits into evidence.

12 JUDGE HILLIARD: Are there any objections?  
13 Hearing no objections, the exhibits, affidavits,  
14 and schedules or attachments outlined by staff will  
15 be admitted into the record.

16 (Whereupon, Staff Exhibits  
17 Nos. 3.0, 16.0, 3.1, 16.1, 4.0,  
18 17.0, 4.1, 17.1, 7.0 and 7.1 were  
19 admitted into evidence as  
20 of this date having been  
21 previously filed on e-docket.)

22 MR. COFFMAN: Gentlemen, I would like to offer

1 the exhibits of AARP. I have AARP Exhibit 1.0,  
2 which is the prefilled direct testimony of Ralph C.  
3 Smith, with his qualifications, attached to that.  
4 Also AARP Exhibit 2.0, which is the prefilled  
5 rebuttal testimony of Ralph C. Smith. It has  
6 attached to it Exhibits 2.1 and 2.2, which are news  
7 articles. And I would offer -- and these were  
8 all -- the direct testimony was filed on e-docket,  
9 February 11th, 2008. The rebuttal was filed on  
10 April 7, 2008, also on e-docket and they were filed  
11 with the affidavits at this time.

12 JUDGE HILLIARD: Any objections? Hearing no  
13 objections, AARP Exhibits 1.0, 2.0 and Attachments  
14 2.1 and 2.2 will be admitted in the record.

15 (Whereupon, AARP Exhibits  
16 Nos. 1.0, 2.0, 2.1 and 2.2 were  
17 admitted into evidence as  
18 of this date having been  
19 previously filed on e-docket.)

20 JUDGE HILLIARD: Anybody else?

21 MR. BOEHM: Good morning, I would like to submit  
22 the direct testimony of Kevin Higgins and attached

1 resume, marked as Kroeger Exhibit 1.0, filed on  
2 e-docket on February 11th. The rebuttal testimony  
3 of Kevin Higgins, marked as Kroeger Exhibit 2.0,  
4 and attached exhibit marked as Kroeger Exhibit 2.1  
5 and filed on e-docket on April 8th. And the  
6 affidavit of Kevin Higgins, filed on e-docket on  
7 February 7th, 2008, marked as Kroeger Exhibit 3.0.

8 JUDGE HILLIARD: Okay. Are there any objections  
9 to the admission of these exhibits? Hearing no  
10 objections, Kroeger Exhibits 1.0, 2.0, 2.1 and 3.0  
11 will be admitted in the record.

12 (Whereupon, Kroeger Exhibits  
13 Nos. 1.0, 2.0, 2.1 and 3.0 were  
14 admitted into evidence as  
15 of this date having been  
16 previously filed on e-docket.)

17 JUDGE HILLIARD: Is that all the admissions by  
18 affidavit that we need to deal with? Is this  
19 Mr. Bodmer?

20 MR. JOLLY it is.

21 (Witness sworn.)

22



1 EDWARD BODMER,  
2 called as a witness herein, having been first duly  
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. JOLLY

7 Q. My name is Ron Jolly, I'm an attorney for  
8 the City of Chicago. Mr. Bodmer, could you please  
9 state your name for the record?

10 A. Edward Bodmer.

11 Q. Do you have in front of you a document that  
12 has been marked City Exhibit 1.0, corrected?

13 A. Yes, I do.

14 Q. That document consists of a cover page, a  
15 table of contents and 82 pages of text in question  
16 and answer form. Is that the direct testimony  
17 you've prepared for submission in this proceeding?

18 A. Yes, it is.

19 Q. And was City Exhibit 1.0, corrected,  
20 prepared by you or at your direction?

21 A. Yes.

22 Q. And attached to City Exhibit 1.0,

1 corrected, is City Exhibit 1.1, do you see that?

2 A. Yes.

3 Q. And is that the biography of Edward Bodmer?

4 A. Yes, it is.

5 Q. Was that prepared by you or at your  
6 direction?

7 A. Yes, it was.

8 MR. JOLLY: And for the record, the City filed  
9 the corrected version of Mr. Bodmer's testimony  
10 yesterday, May 1st, there were two changes. The  
11 first appearing at Page 12, Line 192, and there the  
12 number 2.6 and previous version was changed to  
13 2. -- 2.6 was changed to 2.1, rather, I'm sorry.

14 And then at Page 37, there is a table  
15 following Lines 660 and there on the table the  
16 entry for overhead wire previously stated  
17 11.1 percent and it was corrected to state  
18 20.0 percent. And the corrected version of  
19 Mr. Bodmer's direct testimony was filed on e-docket  
20 yesterday.

21 BY MR. JOLLY:

22 Q. Mr. Bodmer, do you also have in front of

1 you what is marked as City Exhibit 2.0?

2 A. Yes, I do.

3 Q. And that document consisting of a cover  
4 page, a table of contents, and 45 pages of -- I  
5 take that back, 47 pages of text in question and  
6 answer form. Is that the rebuttal testimony you  
7 prepared for submission in this case?

8 A. Yes, it is.

9 Q. And it was prepared by you or at your  
10 direction?

11 A. Yes.

12 Q. And if I were to ask you the questions set  
13 forth in City Exhibit 2.0 today, would your answers  
14 be the same?

15 A. Yes.

16 Q. And if I were to ask you the questions set  
17 forth in City Exhibit 1.0, corrected, today, would  
18 your answers be the same?

19 A. Yes.

20 MR. JOLLY: I have nothing further and I would  
21 move for the admission of City Exhibit 1.0  
22 corrected and City Exhibit 1.1 and City

1 Exhibit 2.0.

2 JUDGE HILLIARD: Any objections? Hearing no  
3 objections, City exhibits 1.0 corrected, 1.1 and  
4 2.0 will be admitted into the record.

5 (Whereupon, City Exhibits  
6 Nos. 1.0, 1.1 and 2.0 were  
7 admitted into evidence as  
8 of this date having been  
9 previously filed on e-docket.)

10 MR. JOLLY: And Mr. Bodmer is available for  
11 cross examination.

12 CROSS EXAMINATION

13 BY

14 MR. STAHL:

15 Q. Yes, thank you, your Honor, David Stahl the  
16 firm of Eimers, Stahl, Klevorn and Solberg, 224  
17 South Michigan Avenue, appearing on behalf of  
18 Commonwealth Edison Company.

19 Good morning, Mr. Bodmer, how have you  
20 today?

21 A. Fine.

22 Q. Let me compliment you on some very colorful

1 pieces of testimony, first of all.

2                   Mr. Bodmer I want to talk to you  
3 primarily about two issues, your proposal for an  
4 outside City of Chicago surcharge and then the  
5 customer cost issues. And if we have time, maybe  
6 we'll touch on one or two other minor issues. And  
7 let's talk about the outside City issues first.

8                   Preliminarily, Mr. Bodmer, you would  
9 agree with me, would you not, that as between the  
10 City and outside the City, Com Ed has one set of  
11 rates?

12       **A.**     With the exception of items that I  
13 mentioned in my testimony, such as rider -- used to  
14 be called Rider 28, it's now called, I think, Rider  
15 NDC. And in addition, with the exception of how  
16 the franchise fee charges and the fee service  
17 charges are collected.

18       **Q.**     And insofar as residential customers are  
19 concerned there is one set of rates that is  
20 applicable to customers inside the City and outside  
21 the City, correct?

22       **A.**     With the exception that I mentioned.

1       **Q.**     Of the riders.

2       **A.**     Yes.

3       **Q.**     Now, when you say at pages -- Lines 60, 61  
4 of your direct testimony, that people who live in  
5 Chicago face unique prices, that's not entirely  
6 accurate, is it?

7       MR. JOLLY:   What line numbers were those?

8       MR. STAHL: 60 and 61.   I assume it's the same on  
9 the corrected testimony.

10      MR. JOLLY:   Yes, it is.   I'm sorry, could you  
11 repeat the question?

12      BY MR. STAHL:

13      **Q.**     Well, let me ask you this, Mr. Bodmer, were  
14 you intending by that question to suggest that  
15 customers inside the City face prices that are  
16 unique from those faced by customers outside the  
17 City?

18      **A.**     I was intending -- the unique, the word  
19 unique, was meant to be as an adjective for usage  
20 characteristics.   When I, in a very general sense,  
21 the difference in prices reflect, what I meant is  
22 that the rates per kilowatt hours are significantly

1 different. And not necessarily -- and not unique.

2 Q. That's average rates per kilowatt hour, is  
3 it not?

4 A. Yes.

5 Q. And we'll talk about that in connection  
6 with the customer charge. When you say on Line 68  
7 of your direct testimony, that City and outside  
8 City customers are distinguished with respect to  
9 the, quote, efficiency, unquote, with which City  
10 residents use electricity, by that you really mean  
11 that City residents use less electricity than those  
12 who live outside the City, do you not?

13 A. Yes.

14 Q. And the reason for that is because the  
15 percentage of multi-family customers in the City is  
16 about 56 percent, but outside the City about  
17 19 percent. And multi-family customers tend to use  
18 less electricity according to your testimony,  
19 correct?

20 A. That's one of the differences. In  
21 addition, the average usage for single family  
22 residents in the City is significantly lower than

1 it is for outside the City.

2 Q. So it's both single family and multi family  
3 you're referring to, correct?

4 A. It's the percentage of multi family, as you  
5 pointed out, and a difference in the usage for  
6 single family, yes.

7 Q. You do not, anywhere in either your direct  
8 or rebuttal testimony, provide any definition of  
9 efficiency or efficient or any benchmark by which  
10 the efficiency of use of electricity by any  
11 customer can be measured, do you?

12 A. I think you pointed out correctly in your  
13 prior question that by efficiency, I'm simply  
14 referring to the level of usage.

15 Q. And you would agree, would you not, that a  
16 low usage customer could use electricity much less  
17 efficiently than a larger user of electricity?

18 A. It's possible.

19 Q. So maybe we can just agree that whenever  
20 you use the term efficient or efficiently or wise  
21 use of energy in your testimony, you're really  
22 talking about less or lower use as opposed to more;



1 is that correct?

2       **A.**     Primarily, yes.

3       **Q.**     Now, you also say in your testimony, this  
4 is at Lines 86 and 87 of your direct testimony,  
5 that because multi-family housing is typically more  
6 dense than single family housing, that that and  
7 other factors, quote, unequivocally and  
8 significantly affect the cost of serving City and  
9 non-City customers; is that correct?

10       **A.**     Yes.

11       **Q.**     You have not, in your testimony, presented  
12 a study or analysis or the results of a study in  
13 which you could say that the cost of serving  
14 customers in the City is X and the cost of serving  
15 customers outside the City is Y; is that fair? X  
16 and Y representing dollars and cents, of course.

17       **A.**     I don't think that's entirely fair. We  
18 certainly made an -- or I certainly made a  
19 significant or certainly made an attempt to compute  
20 the distribution costs for multi family and single  
21 family and distinguish those costs according to the  
22 number of lines, the number of miles of underground

1 and overhead equipment and the number of --  
2 percentage of underground and overhead use. And I  
3 did that according to data that I had previously  
4 obtained on the City versus the outside City of  
5 Chicago service territory.

6 Q. When you say had previously obtained, was  
7 this back in the early 1990's, when you were  
8 working on a cooperative study with Com Ed?

9 A. No.

10 Q. Is it in connection with discovery in this  
11 case?

12 A. No.

13 Q. All right. Maybe you can -- well, strike  
14 at that.

15 You say with respect to the City versus  
16 outside City issues, and this is at Page 25, Lines  
17 about 430, in your direct testimony, that Com Ed's  
18 case is grounded in arguments that it needs rate  
19 relief because it has made more than a billion  
20 dollars in investments for new housing developments  
21 in collar and far collar counties, some located  
22 more than 50 miles from Chicago. Do you see that?

1       **A.**     Yes.

2       **Q.**     And you also say at Page 35, Line 622 to  
3   24, that Com Ed acknowledges that much of the rate  
4   increase results from suburban sprawl.  You say  
5   that, do you not?

6       **A.**     I'm sorry, what line?

7       **Q.**     My reference is Lines 622 to 624 on Page  
8   35.

9       **A.**     I said that Com Ed acknowledges that much  
10  of the rate increase has little to do with  
11  increases attributable to existing customers in the  
12  City.  And then I made -- subsequently added the  
13  phrase, but results from suburban sprawl.  I  
14  wouldn't suggest that Com Ed used the term suburban  
15  sprawl in their testimony.

16       **Q.**     You're not really suggesting that the rate  
17  increase that Com Ed is requesting in this case has  
18  nothing to do with the provision of additional  
19  service inside the City of Chicago are you, or that  
20  Com Ed has acknowledged that somehow?

21       **A.**     I think -- as the subsequent sentence  
22  states, I think it speaks for itself.

1       **Q.**     Subsequent sentence is a reference to the  
2     testimony of Mr. Gorge Williams, Com Ed witness; is  
3     that correct?

4       **A.**     No, I think -- what I was referring to was  
5     Mr. Mitchell.

6       **Q.**     I'm sorry, Mr. Mitchell, okay.   And  
7     finally, you say at Page 27, Lines 461 through 63  
8     of your testimony, that your regionally  
9     differentiated cost data directly conforms to Com  
10    Ed's statements that its rates must increase  
11    because of costs incurred in far collar counties.  
12    Do you see that?

13      **A.**     I see that statement.   I said cost data is  
14    computed from Com Ed data and conforms to Com Ed's  
15    statements, yes.

16      **Q.**     That its rates must increase because of  
17    costs incurred in far collar counties?

18      **A.**     Yes.

19      **Q.**     Now, Mr. Bodmer, you know that Com Ed, in  
20    general, and Mr. Mitchell, in particular, have  
21    never testified that its rate increase in this case  
22    is driven by costs required to serve suburban

1 sprawl and is unrelated to any cost increases in  
2 the City of Chicago. You know that, do you not?

3       **A.**     Certainly when I read the testimony, I saw  
4 that a significant and perhaps predominant portion  
5 of the rate increase was due to the -- rate base  
6 increase is caused by the migration of a  
7 significant number of customers to the far collar  
8 counties.

9       **Q.**     Now, it is true that Mr. Mitchell says in  
10 his testimony, Com Ed Exhibit 1, beginning at Page  
11 3, that he does refer to the growth rate in some of  
12 the outlying counties. But he also says, does he  
13 not, beginning at Line 60, and I'll just read this  
14 to you and you can tell me if it sounds familiar to  
15 you or not, Com Ed has also invested heavily in  
16 facilities and equipment to maintain its  
17 infrastructure and preserve levels of reliability  
18 in developed areas. You are aware of that and were  
19 aware of that at the time you filed your direct  
20 testimony, were you not?

21       **A.**     I had read his testimony, yes, I did.

22       **Q.**     And Mr. Mitchell also testified on the same

1 page that Com Ed has also invested substantial  
2 amounts on new and emerging technologies that will  
3 enable Com Ed to serve its customers more reliably  
4 and provide its customers with greater ability to  
5 manage their energy usage. You are aware of that,  
6 are you not?

7 **A.** I'm aware of that and that is totally  
8 consistent with my recommendation.

9 **Q.** And that has nothing to do with, those two  
10 passages I just read to you, about serving  
11 customers in developed areas and investing in new  
12 technologies, that has nothing to do with serving  
13 customers resulting from suburban sprawl, does it?

14 **A.** No. That's why, in my recommendation, I  
15 specifically stated, and I thought I was careful to  
16 do this, that it would be very important to  
17 differentiate and isolate the revenue requirements  
18 caused by the growth in the collar counties. And  
19 distinguish that growth from other components of  
20 the rate increase. And set the surcharge based on  
21 the differentiated based on those incremental  
22 revenue requirements.

1       **Q.**     And Mr. Williams identified in his  
2     testimony, at least five factors that contributed  
3     to Com Ed's need for a rate increase, is that not  
4     correct?  You are familiar with that, expansion of  
5     the distribution system --

6       MR. JOLLY:  Do you have an extra copy of  
7     Mr. Williams' testimony?

8       MR. STAHL:  No, but you may take a look at my  
9     copy if you'd like.  If I may approach the witness.  
10    It's Com Ed's Exhibit 4.0, beginning at Page 12.

11   BY MR. STAHL:

12       **Q.**     You are familiar with that, expansion of  
13    the distribution system, major increases in cost,  
14    investment in new distribution technologies and  
15    systems, implementation of new support technologies  
16    and systems and inflation.  He identified those as  
17    drivers to the rate increase, correct?

18       **A.**     He did.

19       **Q.**     That's not an acknowledgment that the rate  
20    increase is a result of suburban sprawl, is it?

21       **A.**     I think certainly the first two factors he  
22    mentioned were the result of what I called suburban

1 sprawl. Of course he used a different term, but  
2 they were the same and those were the two factors  
3 that I identified that caused -- would cause it to  
4 be appropriate policy to have a surcharge, a  
5 regional surcharge, as I recommended.

6 Q. You've also read the panel testimony of  
7 Kathryn Houtsma and Stacie Frank in this case, have  
8 you not? The revenue requirements witnesses on  
9 behalf of Com Ed.

10 A. I did read the testimony, yes.

11 Q. Do you recall their testimony identifying a  
12 number of factors that contribute to the need for a  
13 rate increase in this case, including the cost of  
14 capital?

15 A. I recall, again, a similar kind of -- a  
16 similar kind of discussion and that one of the key  
17 parts of the revenue increase or the proposed  
18 revenue increase was the increased investment to  
19 serve new customers.

20 Q. It was just increased investment, was it  
21 not? They didn't separately identify increased  
22 investment to serve new customers, did they?



1       **A.**     I don't remember that.

2       **Q.**     And you referred earlier, in one of your  
3 answers, to, I think, a formula, I think it's a  
4 five step formula, that you would recommend that  
5 somebody followed to calculate what this county by  
6 county surcharge should be, is that correct? And I  
7 believe that's at Page 42 of your direct testimony.

8       **A.**     I referred to that in my direct testimony  
9 and then I discussed that there could be  
10 alternatives to that in my rebuttal testimony, yes.

11       **Q.**     Have you attempted to apply that formula in  
12 this case, to determine what the surcharge might be  
13 in any particular county in Com Ed's service  
14 territory?

15       **A.**     I certainly attempted, but it was not  
16 successful. I just simply wasn't able to get the  
17 data. We asked for the data in numerous different  
18 ways and a few different times, so I was not able  
19 to quantify it, no.

20       **Q.**     Yeah, Com Ed, advised you in response to  
21 those data requests, that at the present time their  
22 system does not maintain cost data or investment

1 data on a county by county basis; is that fair?

2       **A.**     Com Ed stated that it would be unduly  
3 burdensome to provide that data, yes.

4       **Q.**     Under your theory, Mr. Bodmer, would all  
5 customers in the county that is subject to a  
6 surcharge bear that surcharge?

7       **A.**     Under the proposal that I made in the  
8 direct testimony, there would. I think I responded  
9 to Com Ed data request that there are numerous  
10 other reasonable alternatives. In my opinion, the  
11 worst alternative would be the one that's presented  
12 by -- in this case, by Com Ed, and that is to  
13 simply ignore the substantial cost differences.

14       **Q.**     Mr. Bodmer, I'm not asking you to comment  
15 on Com Ed's proposal, I'm asking you to provide me  
16 your view, under your proposal, and that is whether  
17 all customers in the county subject to the  
18 surcharge, what are you recommending to the  
19 Commission, would all customers in that county be  
20 subject to the surcharge?

21       **A.**     As I said, under the recommendation that I  
22 made, in my direct testimony, that's how -- that's

1 how my proposed mechanism would work, yes.

2 Q. And is that how you are standing by that  
3 proposal today?

4 A. Not necessarily. As I responded in a data  
5 request, and as I testified in my rebuttal  
6 testimony, there are certainly other quite  
7 reasonable alternatives.

8 Q. Would it be your recommendation that the  
9 industrial customers who you represent, under the  
10 aegis of REACT, might be subject to this surcharge  
11 if they have facilities in one of those counties  
12 that would happen to be hit with the surcharge?

13 A. That's the way the proposal would work, if  
14 there was an industrial facility in a far collar  
15 county. I don't really know of any, but if there  
16 was, that certainly is the way it would work, yes.

17 Q. And you are about to submit additional  
18 testimony today on behalf of REACT, I assume. Have  
19 you discussed with any of the members of REACT  
20 their views of this surcharge and whether they  
21 would be willing to go along with something like  
22 that?

1       **A.**     I've discussed it with the -- certainly the  
2 attorney for REACT. I haven't directly discussed  
3 it with any of the REACT members.

4       **Q.**     And is that Mr. Townsend you discussed it  
5 with?

6       **A.**     Yes.

7       **Q.**     And did he tell you that's fine,  
8 Mr. Bodmer, don't worry about it, they'll go along  
9 with whatever I recommend?

10      **A.**     I don't think he used those exact words.

11      **Q.**     What about people who have lived in one of  
12 these counties for many, many years and have not  
13 contributed to the recent suburban sprawl that you  
14 decry in your testimony, would they be subject to  
15 this surcharge as well?

16      **A.**     I address that and, again, in my direct  
17 testimony, I said yes. I used the example of a  
18 farmer whose land would have increased  
19 substantially because of the growth in the area.  
20 And again, in the data requests that I submitted to  
21 Com Ed, when I discussed other reasonable  
22 alternatives, I discussed the option of just

1 applying this surcharge only to new customers and  
2 not to existing customers.

3 Q. And which do you recommend today, what is  
4 your preferred alternative today?

5 A. I think in light of the helpful data that  
6 Com Ed presented in the rebuttal testimony, I think  
7 setting a charge on and isolating a charge on new  
8 customers would be more reasonable.

9 Q. So then we would have to identify who all  
10 those new customers are, single them out for  
11 specific treatment. How recent would these  
12 customers have to have been new customers in your  
13 view? The last 6 months or 5 years and do you have  
14 an opinion on that, sir?

15 A. I certainly do. This, and again, a couple  
16 of times in my testimony, I referred to the analogy  
17 of surcharges on airline -- airplane tickets for  
18 the price of fuel or surcharges on taxi cabs for  
19 the price of gasoline. And it depends, the whole  
20 adjustment depends on the run-up in prices of  
21 copper and other items that go into the building of  
22 new distribution. So it's really driven by an

1 analysis of when the cost really escalated, the per  
2 unit cost really escalated. And I understand the  
3 price of copper has been increasing for years, but  
4 probably 2 or 3 years.

5 Q. So you might have to go back 2 or 3 years,  
6 identify how much the copper price increases have  
7 contributed to these increasing costs and then  
8 figure out what share of that would be attributed  
9 to customers who built houses there within the last  
10 2 or 3 years?

11 A. You would have to do something reasonable  
12 and something along those lines. I don't know how  
13 detailed you would really have to get.

14 Q. You are a great believer, are you not,  
15 Mr. Bodmer, in imposing costs on cost causers?

16 A. I'm sorry, I am or am not?

17 Q. No, you are. I believe you to be. If  
18 you're not, tell me. That seems to pervade your  
19 testimony.

20 A. Certainly I understand that it's the basis  
21 for the way rates are sets. In terms of my  
22 personal beliefs, not necessarily. But I

1 understand it is the basis for setting rates at the  
2 Commission.

3 Q. You don't -- well, strike that.

4 Now, you also claim in your testimony  
5 that Com Ed's policy of subsidizing rates for  
6 people who move into large new suburban homes in  
7 far collar counties, encourages continued sprawl  
8 and construction of homes with large carbon  
9 footprints. Does that sound like words you used in  
10 your testimony?

11 MR. JOLLY: Can you identify a site rather than  
12 have us look for it?

13 BY MR. STAHL:

14 Q. I probably can, but does that sound like a  
15 notion you have embraced, Mr. Bodmer?

16 A. Sounds familiar, yes.

17 Q. And then on Page 36 of your direct  
18 testimony, you have this illustration of a home in  
19 one of the new collar counties. Do you see that?

20 A. Yes.

21 Q. Rather modest-looking, American dream-like  
22 home, wouldn't you say Mr. Bodmer?

1       **A.**     Good characterization, yes.

2       **Q.**     Is it your contention that this is an  
3     example of a home with a so-called large carbon  
4     footprint?

5       **A.**     Could be, yes.

6       **Q.**     Why do you show this home here?  What are  
7     we supposed to take away from looking at this?

8       **A.**     Just to simply illustrate the sort of home  
9     I'm talking about.

10      **Q.**     A large carbon footprint home, inhabited by  
11     people who, I think you say somewhere else in your  
12     testimony, drive great distances to and from work  
13     every day and don't take public transportation,  
14     even if it is available?

15      **A.**     I don't think -- I don't think I went that  
16     far.

17      **Q.**     Well, I actually think you did go that far.  
18     If you look at Page 28 of your testimony, beginning  
19     at Line 494, you say, people who live in these  
20     homes generally use a great deal of energy, drive  
21     long distances to and from work and other  
22     destinations and public transportation is



1 practically nonexistent and to the extent available  
2 goes virtually unused. Those are your words,  
3 aren't they?

4       **A.**     I said generally.

5       **Q.**     Well, I mean, have you cited anywhere in  
6 your testimony any statistics on the driving habits  
7 of people who live in homes like that portrayed on  
8 Page 36?

9       **A.**     No, I haven't.

10       **Q.**    And you don't have any information on that  
11 at all, you don't know if the people who live in  
12 this home walk to work, do you?

13       **A.**    No. My information comes from my purely  
14 general knowledge and general knowledge of the  
15 housing stock and the housing stock in far collar  
16 counties, as compared to the housing stock in  
17 places, in densely populated places, like the City  
18 and nearby suburbs.

19       **Q.**    Densely populated places like Diversey and  
20 Paulina in the City of Chicago, for example, would  
21 you say? Right smack in the center of the  
22 northside.

1       **A.**     Could be.

2       MR. STAHL: Could be. May I approach the  
3 witness? This would be Com Ed Cross Exhibit 12.

4                     (Whereupon, Com Ed Cross  
5                     Exhibit No. 12 was  
6                     marked for identification  
7                     as of this date.)

8 BY MR. STAHL:

9       **Q.**     Mr. Bodmer, let me show you what I marked  
10 as Com Ed Cross Exhibit 12. You do a lot of walking  
11 around the City, apparently looking at overhead  
12 wires ands poles and things like that. And  
13 evaluating the housing stock, at least I get that  
14 from your testimony.

15       **A.**     I do it a little bit.

16       **Q.**     Have you seen 2861 North Paulina for sale,  
17 brand-new construction, just finished in the year  
18 2008?

19       **A.**     No I haven't.

20       **Q.**     You're familiar with the neighborhood,  
21 aren't you, Diversey and Paulina, George and  
22 Paulina, whatever it is?

1       **A.**     Generally, I think my son lives around  
2 here.

3       **Q.**     Your son live in this house?

4       **A.**     I hope not.

5       **Q.**     What do you suppose the carbon footprint of  
6 that house is, Mr. Bodmer?

7       **A.**     I'm sure it's -- I'm sure, looking at this  
8 house, given the number of rooms and the size of  
9 the house, I'm sure it would take a lot of energy  
10 and electric energy in particular and I doubt a low  
11 income person could afford this house.

12       **Q.**     Well, this is not unrepresentative of new  
13 housing stock in the City of Chicago, is it? I  
14 could give you another dozen of these from the  
15 Baird and Warner listing if you would be interested  
16 in seeing them.

17       **A.**     It wouldn't interest me all that much.  
18 It's precisely why I use the term general. And  
19 whenever -- just whenever we're discussing items  
20 such as these and items such as the density of  
21 people who live in the City, or the usage of people  
22 who live in the City versus outside City or items

1 such as the relationship between income and usage,  
2 you can always, of course, find exceptions, that's  
3 obvious. The point about setting rates and  
4 particularly in the residential class where you  
5 have large number of customers is you have to use  
6 general tendencies.

7 Q. And all generalizations are false, aren't  
8 they, Mr. Bodmer, including that one? I'll  
9 withdraw that.

10 Mr. Bodmer, you seem to imply in your  
11 testimony, and I'm referring to Lines 497 to 99,  
12 that your proposed surcharge might be a way to  
13 change housing patterns in Northern Illinois. Is  
14 that a point that you're making in your testimony?

15 MR. JOLLY: I object, I think that's an  
16 incorrect characterization.

17 MR. STAHL: Well, if it is, fine, it will save us  
18 some time.

19 MR. JOLLY: I think he says it will have,  
20 perhaps, at most, a minimal impact.

21 MR. STAHL: Well, let's take a look at it.

22 JUDGE HILLIARD: You can answer the question.

1 You can disagree or agree.

2 THE WITNESS: I use the term would discourage.

3 I certainly would not mean to imply that setting a  
4 different distribution tariff or setting a customer  
5 charge would radically affect the decisions people  
6 make to build new houses.

7 BY MR. STAHL:

8 Q. So it is not your belief or position, is  
9 it, that the the size of a surcharge that might be  
10 required to pay the localized costs of Com Ed's  
11 Lake Bluff substation, that's a brand-new  
12 substation at issue in this case, that those costs  
13 would be sufficient to discourage suburban sprawl;  
14 is that fair?

15 A. That's fair.

16 Q. Or to prevent developers from building  
17 housing in the Lake Bluff area that have large  
18 carbon footprints; is that fair?

19 A. Not in and of itself it would not, no.

20 Q. Do you know what the proposed cost -- or  
21 not proposed cost, what the rate based cost of the  
22 Lake Bluff substation is?

1       **A.**     I can't recall, no.

2       **Q.**     Would you agree, as a general proposition,  
3     that if the size of your proposed surcharge would  
4     be large enough to in fact discourage suburban  
5     sprawl and the construction of houses with large  
6     carbon footprints, that that surcharge would be  
7     likely to cause rate shock?

8       **A.**     Could you say the first part of your  
9     question, again?

10       MR. STAHL: Could I ask the reporter to read it  
11     back, please.

12                               (Record read as requested.)

13       THE WITNESS: I'm not certain the first part of  
14     the question accurately characterizes what  
15     Mr. Bodmer said in response to your previous  
16     question.

17     BY MR. STAHL:

18       **Q.**     I guess I'm asking a hypothetical, that if  
19     the surcharge were large enough to discourage  
20     suburban sprawl and the construction of houses with  
21     large carbon footprints, that that surcharge would  
22     likely have to be large enough that it would cause

1 rate shock. Would you agree with that?

2       **A.**     That calls for some definition of what rate  
3 shock is, the term rate shock. And it calls for an  
4 analysis of how high the distribution costs would  
5 have to be on a relative basis, compared to -- for  
6 homes in new areas versus existing homes. How high  
7 that would have to be before you would actually  
8 make a decision to change your -- to make a  
9 decision on your -- in where you would live. I'm  
10 sure in order to affect decision making, that  
11 surcharge would have to be a very high -- at a very  
12 high level, much higher than would be the result of  
13 my proposal in this case.

14       **Q.**     Mr. Bodmer, let's talk about customer costs  
15 for a minute in the interest of time. You  
16 basically say that there is an adverse affect that  
17 will be felt by multi-family residential customers  
18 because of Com Ed's rate request here. And the  
19 reason for that is that the average price for each  
20 kilowatt hour paid by the multi-family customers  
21 will be greater than for single family customers,  
22 because of the customer costs, the fixed cost that

1 is represented by the customer costs; is that fair?

2 A. There was quite a bit in that statement.

3 Q. I've got 82 pages of testimony, I'm trying  
4 to summarize it quickly.

5 A. No, that's fine. I think I did indeed  
6 highlight the substantial increase that's faced by  
7 particularly small users in apartment buildings.  
8 And the fact that that's much more than single  
9 family homes. And that the average, I think I have  
10 a chart that shows the average rate per kilowatt  
11 hour being far higher, either on a distribution  
12 only or on a distribution and generation and  
13 transmission basis. I think one of the reasons,  
14 one of the reasons for that is the method by which  
15 Com Ed applies the customer costs. And other  
16 methods certainly would be the difference in policy  
17 that Com Ed applied to the multi-family class when  
18 it had a marginal cost of service study compared to  
19 the imbedded cost of service study. So there are  
20 certainly a number of reasons, not only the  
21 customer cost.

22 Q. Well, let's talk about the marginal cost of



1 service study. This goes back to the 94-0065 rate  
2 case, does it not?

3 A. Not, the marginal cost of service study was  
4 also used and presented in more recent cases and  
5 certainly strongly advocated by Com Ed.

6 Q. In 94-0065, you testified on behalf of the  
7 City, did you not?

8 A. I did.

9 Q. Made recommendations in that case that are  
10 really very similar to many of the recommendations  
11 you're making here, correct?

12 A. I think the primary focus in that case was  
13 the inverted block rate for customers who used more  
14 than 400 kilowatt hours, so both the analysis and  
15 the conclusions were different. The general notion  
16 of examining costs by usage was similar.

17 Q. You, in that case, advocated imposing costs  
18 of installation and hookup on new customers who  
19 were just coming on to the Com Ed system, did you  
20 not?

21 A. I advocated that as consistent with  
22 marginal cost of service. The existing, the

1 existence of a customer, cannot be defined as  
2 marginal costs, yes.

3 Q. And that's similar to your proposal here,  
4 at least as I understand it, of perhaps imposing on  
5 customers who build new homes in far collar  
6 counties, imposing on them the costs incurred as a  
7 result of serving them?

8 A. It happens to have some analogies, but the  
9 whole basis was entirely different. The basis for  
10 that statement was entirely on examination of what  
11 the theory of marginal cost of service should be  
12 and what an appropriate mechanism for assigning  
13 marginal costs -- marginal customer costs would be.

14 Q. You criticize the testimony of Alongi and  
15 Jones for stating that the customer charge in  
16 94-0065 was not cost based. Do you recall that?

17 A. Yes.

18 Q. And you say that there were no -- somewhere  
19 in your testimony you say that there were no  
20 installation costs included in the customer charge,  
21 when marginal cost principles were used?

22 A. I don't think I said that in this

1 testimony.

2       **Q.**     Would you agree that when marginal cost  
3 studies were used, Com Ed did include customer  
4 installation costs in the customer charge?

5       **A.**     Absolutely not.

6       **Q.**     You don't agree with that?

7       **A.**     No.

8       **Q.**     In fact in 94-0065 you presented a  
9 technical Appendix in which you testified that --  
10 do you remember your technical Appendix in that  
11 case?

12      **A.**     Not really.

13      **Q.**     You were asked the question, why should the  
14 cost of replacing meters and service drop be  
15 included as a component of ongoing marginal  
16 customer cost. Do you remember being asked that  
17 question?

18      **A.**     Let me be very clear about my previous  
19 answer, perhaps there is a little bit of a  
20 misunderstanding. In this case, in the current  
21 case, I testified about an account Com Ed labels,  
22 that's included in the imbedded cost of service

1 study, named customer installation costs. These  
2 are -- there is some debate about this item and I  
3 suggested that these costs, it's completely  
4 inappropriate to allocate these costs, these  
5 imbedded costs that Com Ed labels customer  
6 installation costs, on the basis of the number of  
7 customers, because they are not related to the  
8 number of existing customers, obviously. That is  
9 entirely different than the whole installation cost  
10 discussion that I presented in the 94 case.

11 Q. Well, it may be different, but the fact is,  
12 there were customer installation costs included in  
13 both Com Ed's customer costs, customer charge,  
14 which was based on a marginal cost of service  
15 study. And a portion of those installation costs  
16 were included in your customer charge, were they  
17 not?

18 A. I recall that there might have been some  
19 costs associated with installation of a customer  
20 meter, what Com Ed would have appropriately called  
21 marginal costs of service. I do not believe these  
22 were from the same accounts that Mr. Heintz uses in

1 the imbedded cost of service study.

2 Q. Well, we don't have time to relitigate  
3 94-0065 or probably the inclination to do it,  
4 either. Let me ask you this, though, and I think  
5 you just said that -- or at least you say in your  
6 testimony that customer installation costs,  
7 customer information costs and services and data  
8 management, are directly or indirectly proportional  
9 to the size of the ratepayer. That's in your  
10 direct testimony, Page 18, beginning at Line 318.  
11 Does that sound like something you would have  
12 testified to?

13 A. I would be surprised if I made the very  
14 last statement.

15 Q. You would be surprised?

16 A. That I said the cost of data management are  
17 entirely related to size.

18 Q. Well, can you take a look at Page 18, let's  
19 make sure we understand exactly what it is you  
20 said. I was reading beginning at Line 317, where  
21 you say, Com Ed's cost study must recognize that  
22 costs such as customer installation, customer

1 information, services and data management are  
2 directly or indirectly proportional to the size of  
3 the ratepayer. Do you see that?

4 **A.** Yes. And the key word there is or  
5 indirectly. Perhaps you said that in your last  
6 statement, I just didn't -- I apologize if you did  
7 it.

8 **Q.** I believe the record will reflect I did say  
9 that.

10 **A.** Then I apologize.

11 **Q.** Now, Mr. Bodmer, you have nowhere in your  
12 testimony provided any empirical analysis or study  
13 or anything else to support that broad and general  
14 proposition that I just read to you, have you?

15 **A.** I have attempted to, with respect to the  
16 customer installation costs, for example. I did an  
17 analysis that reveals that that single account,  
18 when you compare the customer installation costs  
19 from the last rate case to this case, that had a  
20 higher percent increase than any other costs. And  
21 that tends to verify or tends to support the notion  
22 that the installation cost, indeed, did count for a

1 lot of growth that we have been discussing and was  
2 not simply by virtue of being -- does not occur  
3 simply by virtue of being an existing customer.

4       **Q.** But I didn't read in your testimony that  
5 customer installation costs are a function of load  
6 growth. I read in your testimony that customer  
7 installation costs and all of these other costs are  
8 directly or indirectly proportional to the size of  
9 the ratepayer. And you've just said something  
10 quite different, haven't you?

11       **A.** I think I was pretty clear on that, both in  
12 my direct testimony and my rebuttal testimony, and  
13 I can point you to the specific statements. But  
14 the notion was that it would be appropriate to  
15 allocate customer installation costs on the basis  
16 of new customers. Com Ed doesn't have billing  
17 determinants for new customers, so as an  
18 alternative I suggested that it's far better to  
19 allocate those costs on the basis of the energy  
20 usage or something related to size and not  
21 disproportionately allocate those costs to the  
22 lowest use customers.

1       **Q.**     Well, I understand what your preferred  
2     method of allocation is, but what I'm trying to  
3     find out is where you have presented, in any of  
4     your testimony, support, empirical support, for the  
5     proposition that customer installation costs for a  
6     customer who uses 800 kilowatt hours a month are  
7     higher than for a customer who uses 400 kilowatt  
8     hours a month.

9       **A.**     Again, I did just, I think, answer that. I  
10    did present data suggesting number one, that these  
11    costs do arise from new customer activity, rather  
12    than just existing customers, number one. And the  
13    second part, I agree is logic. It's logic that if  
14    you have a larger customer, they are likely to have  
15    higher installation costs than a smaller customer.

16               So I agree that that and a number of the  
17    other propositions were based on logic, rather than  
18    any kind of detailed empirical study.

19       **Q.**     That wouldn't be an example of a firehouse  
20    affect, would it, Mr. Bodmer, by any chance?

21       **A.**     Well, you know, we tried -- we tried to  
22    obtain data, and I agree that whenever possible,



1 statements such as this should be made on empirical  
2 data. We attempted to get data on a number of  
3 issues and we were unable to. But certainly we  
4 tried to get that.

5 Q. Just so everybody understands, the  
6 firehouse affect is a phenomenon you describe in  
7 your rebuttal testimony and you are accusing Com Ed  
8 and Mr. Alongi and Dr. Jones, in particular,  
9 falling subject to the firehouse affect by doing  
10 something that I guess people who work in  
11 firehouses do, they sit around, have a lot of time  
12 together, they are sort of insulated from the  
13 outside world and so they just sort of build on  
14 their own preconceptions and own logical  
15 constructs, is that the firehouse affect,  
16 Mr. Bodmer?

17 A. I included a quote, I included a quote from  
18 a book and I did that in order to highlight -- in  
19 order to highlight the notion that these issues  
20 need to be, where possibly, very much like all of  
21 this discussion we had about regional surcharges,  
22 these need to be addressed with real data, yes.

1       **Q.**     Okay.  We're just about finished here,  
2     Mr. Bodmer.  You also say in your testimony, and  
3     this is at Lines 447 to 450 of your direct direct  
4     testimony, that it would be difficult to explain  
5     to, and I think you're referring to an apartment  
6     dweller in the City of Chicago, why the customer  
7     charge will increase by 238 percent over the 2006  
8     level, because Com Ed has had to pay high software,  
9     consulting and legal costs as it has transitioned  
10    from regulated to deregulated rates.  Do you see  
11    that?

12       **A.**     What was the page again?

13       **Q.**     It's on Page 26, beginning at Line 445?

14       **A.**     I see that, yes.

15       **Q.**     And that is a gross distortion and  
16    overstatement in any number of respects, isn't it,  
17    Mr. Bodmer?

18       **A.**     Can you repeat that, please?

19       **Q.**     Sure, I will.  The multi-family customer  
20    charge is, under the Company's proposal, increasing  
21    from \$7.05 a month to \$9.34 a month, is that  
22    correct, Mr. Bodmer?

1       **A.**     Well, I specifically stated over the 2006  
2 level.

3       **Q.**     Well, what is the customer charged today or  
4 what was it in 2006?

5       **A.**     \$2.94.

6       **Q.**     So you are going back to rates that were  
7 set in 2001?

8       **A.**     Yes.

9       **Q.**     I see.

10      **A.**     That analogy was explaining to somebody  
11 what -- why -- or what's happened to the rates  
12 since 2006, exactly.

13      **Q.**     You know that \$2.94 customer charge was set  
14 by the Commission's rate order in January 1995 as a  
15 result of the 94-0065 case and then reduced by  
16 20 percent under the 1997 Act, correct?

17      **A.**     That's correct.

18      **Q.**     And you also know that that \$2.94 rate was  
19 set by the Commission in this case based on cost of  
20 service evidence that showed, according to Com Ed's  
21 numbers, the customer charge ought to be \$8.33.  
22 And according to your own numbers, should have been

1 \$5.17. Do you recall that, Mr. Bodmer?

2       **A.** I recall the -- I recall that case in  
3 general, and I recall that the customer charge was  
4 one of the items that could be used to  
5 appropriately reflect the cost -- the overall cost  
6 of service for low use and high use customers.

7               In other words, if there was also a  
8 steep decline blocking that rate in that case and  
9 if you wanted to more appropriately reflect the  
10 overall cost of service, across all levels of  
11 usage, the customer charge was indeed a mechanism,  
12 lowering the customer charge was a reasonable  
13 mechanism in order to, I'll use the word levelize,  
14 the cost of service across different usages. And I  
15 also show that that customer charge is not at all  
16 out of line with the customer charge used by other  
17 utility companies currently.

18

19

20                               (Change of reporter.)

21

22

1 BY MR. STAHL:

2 Q. Well, that's not --

3 A. -- currently?

4 Q. That's not the measure of cost recovery  
5 here, is it, what other companies do?

6 A. It's -- it's not the -- certainly not the  
7 measure, but it's a relevant thing to look at.

8 Q. Now, you know that the increase in the  
9 customer charge proposed in this case is really  
10 more on the order of about 32 percent for the  
11 multifamily customers, correct?

12 7.05 to 9.34?

13 A. Yes, that's correct.

14 Q. And when you say that the 238 percent  
15 increase is going to occur because ComEd has had to  
16 pay high software, consulting and legal costs, how  
17 much of that difference between \$2.94, which is the  
18 2006 customer charge you're comparing, and the  
19 proposed \$9.34 customer charge, how much of that  
20 difference is due to ComEd's software, consulting  
21 and legal costs resulting from the transition from  
22 regulated to deregulated rates?

1                   Do you have any idea?

2       **A.**     I wasn't -- I tried to get that data. We  
3     tried to get that data, but we were unable to do an  
4     analysis.

5       **Q.**     But that didn't stop you from contending  
6     that that increase was because ComEd has had to pay  
7     high software, consulting and legal costs. That --  
8     you weren't deterred by that lack of data from  
9     making that broad data, were you?

10      **A.**     I did make that statement. So I suppose I  
11     was not deterred.

12      MR. STAHL: I have nothing further of this  
13     witness at this time.

14      JUDGE HILLIARD: Redirect?

15      MR. JOLLY: Yeah.

16                   REDIRECT EXAMINATION

17                   BY

18                   MR. JOLLY:

19      **Q.**     Mr. Bodmer, do you recall Mr. Stahl asking  
20     you questions regarding Lines 86 through 87 of your  
21     testimony regarding multifamily customers living in  
22     a more dense situation?

1 Do you recall that?

2 A. Yes.

3 Q. And do you recall he asked you if you had  
4 presented a study of the costs of serving city  
5 versus noncity customers.

6 Do you recall that?

7 A. Yes.

8 Q. Has ComEd presented any such information in  
9 this case?

10 A. No.

11 Q. Has ComEd's embedded cost study  
12 demonstrated differences between serving city and  
13 noncity customers?

14 A. It doesn't -- not only city versus noncity.  
15 Unlike the past in which it explicitly accounted --  
16 well, the marginal cost study explicitly accounted  
17 for factors such as density and overhead and  
18 underground. It doesn't account for any of that.

19 Q. And so in the -- in past cases, ComEd did  
20 provide that information?

21 A. In their marginal cost studies, they did a  
22 very detailed analysis of how much customers -- how

1 much residential customers used in terms of  
2 underground and overhead equipment, how much -- how  
3 densely populated -- what kind of density they  
4 exhibited and other factors, yes.

5 Q. Do you recall Mr. Stahl asking you a series  
6 of questions regarding the testimonies of ComEd  
7 witnesses Mr. Mitchell and Mr. Williams, in  
8 particular, regarding that at least a portion of  
9 the rate increase that ComEd is seeking in this  
10 case is due to factors other than growth in collar  
11 counties and outside city areas?

12 A. Yes, I recall that.

13 Q. And do you recall him showing you what is  
14 ComEd -- what is marked as ComEd Exhibit 12, the  
15 picture of a large home inside the City of Chicago?

16 A. Yes.

17 Q. In your recollection of Mr. Mitchell's and  
18 Mr. Williams' testimony, what was your impression  
19 of what was the primary driver of the rate increase  
20 that ComEd is seeking in this case?

21 A. Just from a quick reading of the testimony  
22 and, indeed, from before I even received the



1 testimony when I discussed this with others, the  
2 general idea was that a substantial part of this  
3 case comes from the expensive requirements to serve  
4 the far collar and collar counties, the new  
5 developments in those areas.

6 Q. And do you recall Mr. Mitchell stating in  
7 his direct testimony that ComEd's service territory  
8 includes six of the 100 fastest growing counties in  
9 the United States?

10 A. Yes.

11 Q. And do you recall that he stated that  
12 Kendall County has a 62 percent growth rate and  
13 that the -- which is the second highest growth rate  
14 in the country?

15 A. I generally recall that, yes.

16 Q. Do you recall if Cook County was included  
17 in the six fastest growing counties discussed in  
18 Mr. Mitchell's or Mr. Williams' testimony?

19 A. I don't think it was, no.

20 Q. Do you recall Mr. Stahl asking you  
21 regarding about the process you proposed for  
22 calculating a county surcharge for the counties

1 that are in ComEd's service territory?

2 A. Yes.

3 Q. And in response, you stated that there are  
4 other alternatives; is that right?

5 A. Yes, I did.

6 Q. And in a -- and you also mentioned in a  
7 data response, you listed some -- some of the  
8 alternatives; is that right?

9 A. I did.

10 Q. And has ComEd suggested any alternatives  
11 other than what they're proposing in this case?

12 A. No, they have not.

13 Q. Does -- which do you think is a more just,  
14 more preferable method for allocating costs, what  
15 ComEd is proposing or any of the alternatives  
16 you've suggested either in testimony or in  
17 discovery?

18 A. I think any of the alternatives would  
19 certainly be preferable to the alternative of just  
20 spreading rates over existing customers.

21 Q. Do you recall questions Mr. Stahl asked you  
22 regarding customers in far suburban areas having a

1 large carbon footprint?

2 A. Yes.

3 Q. And do you recall him asking you if -- do  
4 you have -- if you had any statistics regarding  
5 driving distances for persons who live in those  
6 areas?

7 A. I do recall that.

8 Q. And you said you didn't have any particular  
9 statistics; is that right?

10 A. I did.

11 Q. And why is it you believe that cust- --  
12 that persons who live in those areas would drive  
13 further distances than persons who live in denser  
14 areas?

15 A. It's simply because of the density of the  
16 housing, the distance between any -- anything from  
17 shopping centers to workplaces, the unavailability  
18 of -- of the public transport.

19 Q. Do you think it's necessary to have a study  
20 to demonstrate the assertion made in your  
21 testimony?

22 A. No, I don't.

1       **Q.**     Do you recall a series of questions  
2     Mr. Stahl asked you about the customer charge?

3       **A.**     Yes.

4       **Q.**     And at one point, he asked you about the  
5     ad- -- he characterized your testimony, stating  
6     that you were concerned about the adverse affect of  
7     the customer charges in multifamily versus  
8     single-family customers.

9                     Do you recall that?

10      **A.**     Yes.

11      **Q.**     And I think, as part of his question, he  
12     stated that there are fixed costs in the customer  
13     charge.

14                     Do you recall that?

15                     Well, it's a point of clarification.  
16     And the record will show this; but in the event he  
17     did ask that, do you believe in ComEd's proposed  
18     customer charge, that there are only fixed costs?

19      **A.**     I believe there are certainly some costs --  
20     and this is the important point. There are some  
21     costs that do, to a certain extent, vary by usage.

22                     And the assumption is that in placing

1 the -- in coming up with the customer charge, that  
2 all customer information costs, all customer  
3 installation costs, all the costs ComEd labeled as  
4 billing and data management costs, all metering  
5 costs and all of the costs of a service drop are  
6 only related to the number of customers. They have  
7 no variation whatsoever with usage.

8 Q. Do you recall Mr. Stahl asking you  
9 questions about a proposal you made in ComEd's rate  
10 case in Docket 94-0065?

11 A. Yes.

12 Q. And according to Mr. Stahl, in that case,  
13 you advocated imposing costs on new customers.

14 Do you recall that?

15 A. Yes.

16 Q. Is your proposal to impose costs on new  
17 customers in this case different from the proposal  
18 you made in that case; and if so, how?

19 A. The whole basis is entirely different. The  
20 earlier case was, as I stated, the basis of the  
21 recommendation was to appropriately measure  
22 marginal cost of service.

1                   In this case, it's to reflect a  
2   surcharge that is -- that would be appropriate  
3   because of the dramatically increased costs of  
4   commodities and other items that have -- that have  
5   led to the costs that -- the rate base increases in  
6   this case.

7                   In other words, it's -- as I said  
8   earlier, it's very much like a surcharge that you  
9   pay on airplane tickets and ComEd's proposal is  
10  analogous to charging people who never fly in an  
11  airplane that surcharge.

12       **Q.**    Do you also recall Mr. Stahl stating that  
13  the measure of what other utilities charge for  
14  their customer charge is not the appropriate  
15  measure in this case?

16       **A.**    Yes.

17       **Q.**    Do you have any recollection of ComEd in  
18  past cases comparing its rates to other utility's?

19       **A.**    It did, yes.

20       **Q.**    In ComEd's last case, 05-0597, did you  
21  present testimony regarding costs of equity?

22       **A.**    I did.

1       **Q.**     And did ComEd present evidence in that case  
2     comparing its cost of equity versus other  
3     utilities' cost of equity?

4       **A.**     I think it presented both the cost of  
5     equity and the allowed returns by the -- in other  
6     jurisdiction, yes.

7       **Q.**     Okay.  And, finally, does -- do any of the  
8     questions that Mr. Stahl asked today, do they have  
9     any impacts on the conclusions you present in your  
10    direct and rebuttal testimony?

11      **A.**     No.

12      MR. JOLLY:  That's all I have.

13      JUDGE HILLIARD:  Do you have recross?

14      MR. STAHL:  Yes, very briefly.

15                    RECROSS-EXAMINATION

16                    BY

17                    MR. STAHL:

18      **Q.**     Mr. Bodmer, cost of equity, looking at peer  
19     group utilities is an essential part of a return on  
20     equity analysis, is it not?

21      **A.**     It's one of the things that should be  
22     looked at.  I don't know if it's essential.

1           The capital asset pricing model, for  
2   example, doesn't -- doesn't rely on anything with  
3   peer groups.

4       **Q.**    But other forms of calculating a proper  
5   return on equity typically look at peer groups, do  
6   they not?

7       **A.**    Typical analysis of discounted cash flow  
8   does, yes.

9       **Q.**    And you analogized ComEd's customer cost to  
10   a fuel surcharge being imposed on people who never  
11   fly an airplane.

12           The fact of the matter is, if the  
13   customer charge is cost-based, you believe that a  
14   customer charge is appropriate, do you not?

15       **A.**    I'm sorry. I -- just to be clear, the  
16   analogy was meant to reflect the surcharge.

17       **Q.**    Okay.

18       **A.**    So I was talking about a fuel surcharge on  
19   airplanes from the higher cost of fuel and trying  
20   to make the analogy between that and the high cost  
21   of copper that's caused the cost increases.

22       **Q.**    That's the trouble with analogies. They're



1 always imperfect.

2 Do you know how much ComEd invested in  
3 distribution infrastructure in the last ten years?

4 A. No.

5 Q. No?

6 A. (Shaking head.)

7 Q. Do you recall that -- do you know enough  
8 about it to know that it's in the hundreds of  
9 millions of dollars?

10 A. I think it would be in the billions.

11 Q. Yeah. I don't recall, during any of that  
12 period of investment, you proposing to this  
13 Commission any kind of regional surcharge to make  
14 people who benefit from that investment pay for it  
15 during that period of time.

16 Did I miss that somewhere along the  
17 line?

18 A. I think I addressed that point directly in  
19 my testimony on a number of occasions and  
20 emphasized, as I did in answering one of your  
21 questions, that the difference here is that the  
22 cost per unit has changed so dramatically.

1       **Q.**     That's --

2       **A.**     It's as if an airline company was expanding  
3     service, that wouldn't cause costs to increase.  
4     I'm talking about the cost per unit.

5       **Q.**     But what if the cost per units had  
6     increased during that last ten-year period, would  
7     you be in favor of going back and analyzing how  
8     much of that investment was due to increased costs  
9     and then allocating that to customers in the City  
10    of Chicago?

11      **A.**     If the circumstances were very similar to  
12    what they are currently, it would be reasonable.  
13    If they were because there was a neglect earlier of  
14    the -- of the infrastructure, of course, they  
15    wouldn't be appropriate.

16      **Q.**     Final question:

17               In terms of traffic patterns,  
18    Mr. Bodmer, have you ever driven out to the  
19    northwest suburbs from the city at about 7:00  
20    o'clock in the morning and get stuck in one of  
21    those parking lots on the Kennedy or the Edens  
22    because people were going to work from the city to

1 the suburbs?

2 Have you ever observed that?

3 A. I've observed it on television, yeah.

4 Q. On television?

5 A. I haven't in the morning driven from the

6 city to the northwest suburbs.

7 MR. STAHL: Okay. Try it sometime.

8 I have nothing further.

9 Thank you.

10 THE WITNESS: Okay.

11 JUDGE HILLIARD: Do you have re-redirect?

12 MR. JOLLY: Yeah, just one question.

13 FURTHER REDIRECT EXAMINATION

14 BY

15 MR. JOLLY:

16 Q. Do you recall Mr. Stahl just asking you

17 about if costs had increased over a ten-year

18 period, would you impose a surcharge on city

19 ratepayers?

20 A. I recall that.

21 Q. Do you recall if Mr. Alongi and Dr. Jones,

22 in their -- I think it's rebuttal testimony

1 included a chart in which they compared investment  
2 in the city versus investment in noncity areas?

3 A. I recall that chart.

4 Q. And do you recall what time period that  
5 chart examined?

6 A. I think their analysis began in the year  
7 2002.

8 Q. And what did that chart show?

9 A. That chart showed that there were, indeed,  
10 substantial investments in the city from 2002 and  
11 2003 and 2004.

12 And then the last couple of years,  
13 although there have been substantial investments  
14 relative to a number of customer or the kilowatt  
15 hours sales that have been having significantly  
16 less than the outside city areas.

17 Q. And is it your recollection that their  
18 testimony was that during the period they examined,  
19 that the investment in the city was commensurate  
20 with the electric usage in the city?

21 A. Yes.

22 Q. And is it your position that the cost of

1 the basic items that are used to expand the system  
2 have changed over a more recent period of time?

3 A. That's my understanding and that's  
4 confirmed by data presented in the testimony of  
5 ComEd witnesses, yes.

6 MR. JOLLY: That's all I have.

7 MR. STAHL: Nothing.

8 JUDGE HILLIARD: Do you have any more?

9 The gentleman for Kroger, did you have  
10 questions of this witness?

11 MR. BOEHM: I have no questions.

12 JUDGE HILLIARD: All right. So there's no  
13 further cross-examination of this witness; is that  
14 correct?

15 All right. Then we'll take a  
16 five-minute break.

17 (Recess taken.)

18 JUDGE HILLIARD: Okay. Mr. Bodmer, you're still  
19 under oath.

20 Go ahead, Counsel.

21 MR. TOWNSEND: The Coalition to Request  
22 Equitable Allocation of Cost Together calls Edward

1 C. Bodmer.

2 EDWARD C. BODMER,  
3 recalled as a witness herein, having been  
4 previously duly sworn, was further examined and  
5 testified as follows:

6 DIRECT EXAMINATION

7 BY

8 MR. TOWNSEND:

9 Q. Good morning, Mr. Bodmer.

10 Do you have before you what's been  
11 previously marked as REACT Exhibit 2.0 with  
12 attachments labeled REACT Exhibits 2.1 through 2.5  
13 as well as REACT Exhibit 6.0, which is entitled The  
14 Rebuttal Testimony of Edward C. Bodmer on behalf of  
15 the Coalition to Request Equitable Allocation of  
16 Rates Together.

17 Do you have those before you?

18 A. I do.

19 Q. And do you intend for those to be your  
20 prefiled testimony in this proceeding?

21 A. Yes.

22 MR. TOWNSEND: Your Honors, they were timely

1 filed on eDocket.

2 With that, we would move for the  
3 admission of REACT Exhibits 2.0 with attachments  
4 2.1 through 2.5 and REACT Exhibit 6.0.

5 JUDGE HAYNES: Any objections?

6 Hearing none, those exhibits are  
7 admitted.

8 (Whereupon, REACT  
9 Exhibit Nos. 2 and 6 were  
10 admitted into evidence as  
11 of this date.)

12 MR. TOWNSEND: And we tender the witness for  
13 cross-examination.

14 JUDGE HILLIARD: Go ahead.

15 CROSS-EXAMINATION

16 BY

17 MR. STAHL:

18 Q. Good morning once again, Mr. Bodmer. David  
19 Stahl on behalf Commonwealth Edison Company.

20 At Lines 64 through 65 of your direct  
21 testimony, you ask the question: What did the  
22 over-ten-megawatt customers do to deserve such a

1 disproportionate massive rate increase?

2 Do you see that?

3 A. Yes.

4 Q. And then you say in the next couple of  
5 lines that ComEd has not provided an answer to that  
6 question, correct?

7 A. Yes, I do see that.

8 Q. In fact, Mr. Bodmer, you knew the answer to  
9 that question even before you asked it, did you  
10 not?

11 A. I think the increase comes from a change in  
12 the manner in which costs have been assigned,  
13 generally, yes.

14 Q. And you knew that was coming well before  
15 you prepared your direct testimony in this case,  
16 did you not?

17 A. I didn't know before I presented the  
18 testimony in this case, no.

19 Q. You didn't?

20 A. No.

21 Q. You participated on behalf at least of the  
22 City of Chicago in ComEd's immediately preceding



1 rate case, 05-0597, did you not?

2 A. Yes.

3 Q. Provided testimony in that case?

4 A. I did.

5 Q. You followed that case with at least some

6 interest and attention, did you not?

7 A. I did.

8 Q. And were you aware that in that case,

9 Mr. Crumrine testified on behalf of ComEd in

10 connection with the subsidies that ComEd believed

11 large industrial customers were receiving at that

12 time?

13 A. I was aware of Mr. Crumrine's testimony.

14 Yes, I was.

15 Q. And were you aware, in particular, that on

16 March 14th, 2006, he submitted direct testimony in

17 that case which was marked as ComEd Exhibit 40.0,

18 in which he made the following points:

19 One, that a number of parties were

20 proposing that the over-ten-megawatt class be

21 provided a substantial subsidy.

22 Do you recall Mr. Crumrine making that

1 point in that testimony?

2 MR. TOWNSEND: I have --

3 MR. STAHL: I have the testimony, if you'd like  
4 to see it.

5 MR. TOWNSEND: I'd appreciate that. Sure.

6 And especially since you have so many  
7 specifics built into that question. It really  
8 would help so that that's not a compound question.

9 MR. STAHL: I don't believe it that many  
10 specific, but I'll rephrase it if the witness  
11 doesn't understand it.

12 MR. TOWNSEND: I didn't suggest that the witness  
13 didn't understand it. I suggested that it was an  
14 improperly compound question and that the way to  
15 avoid an objection would be to be able to provide  
16 us with a copy of that testimony. So I appreciate  
17 you providing us with a copy of that testimony.

18 And I'm sorry. Did you hand us a  
19 complete copy? And do you have a copy for me?

20 MR. STAHL: I don't have a complete copy.

21 BY MR. STAHL:

22 Q. But you have no doubt, do you, Mr. Bodmer,

1 that what I've given you is a copy of at least a  
2 portion of Mr. Crumrine's direct testimony in a  
3 that case, Exhibit 40.0 -- actually, rebuttal --  
4 actually, surrebuttal testimony?

5       **A.**     It certainly -- I have no doubt that it is.  
6 That's right.

7       **Q.**     All right. And I'm going to go back and  
8 ask the question.

9                   Were you aware that at the time you  
10 filed your direct testimony in this case on behalf  
11 of REACT, that Mr. Crumrine had testified two years  
12 prior that a number of parties in the last rate  
13 case were proposing that the over-ten-megawatt  
14 class be provided, in Mr. Crumrine's view, a  
15 substantial subsidy?

16       **A.**     I wasn't aware of the specific testimony,  
17 but I was generally aware of the...

18       **Q.**     Were you generally aware that that was what  
19 ComEd's position was in that case; namely, that the  
20 over-ten-megawatt customers were being provided a  
21 substantial subsidy, in ComEd's view?

22       **A.**     I was -- I was generally aware of that,

1 yes.

2 Q. And you were also generally aware, were you  
3 not, that the rate that was being provided to the  
4 over-ten-megawatt customers at that time was, in  
5 ComEd's view, an artificially low rate for those  
6 customers that had been set in the 2001 rate case?

7 A. In general, that's ComEd's -- that's  
8 certainly ComEd's view, yes.

9 Q. Yes. Yes. And you also knew at that time  
10 that the unit distribution facilities charge was  
11 less than one half of what the embedded cost of  
12 service study in that case supported. You knew  
13 that, didn't you?

14 MR. TOWNSEND: Are you asking about he knew  
15 that --

16 MR. STAHL: He knew that at the time he prepared  
17 his direct testimony in this case.

18 THE WITNESS: I actually didn't.

19 BY MR. STAHL:

20 Q. You didn't?

21 A. No.

22 Q. Can you look through that testimony and

1 tell me if you see that statement in there?

2 MR. TOWNSEND: Objection, relevance.

3 MR. STAHL: Well, he's asking the rhetorical  
4 question of what in the world did these customers  
5 do to deserve this fate.

6 And the fact of the matter is, they  
7 didn't do anything, but the Company's position had  
8 always been for at least two years that these  
9 customers were being subsidized to the extent of  
10 many millions of dollars, and that should have been  
11 well known to Mr. Bodmer at the time he asked the  
12 question in his testimony and then went on to state  
13 further that ComEd has never answered that  
14 question.

15 All I'm suggesting is he should have  
16 known that at the time he filed his testimony here.

17 JUDGE HILLIARD: You can answer the question if  
18 he has an answer.

19 THE WITNESS: Again, if it is in this -- I  
20 assume it's in the testimony as you stated. I --  
21 and I am aware that and I was aware that after the  
22 change from marginal cost to embedded cost, there

1 was a big change in the cost of service for these  
2 customers, measured cost of service.

3 BY MR. STAHL:

4 Q. And whether or not ComEd had sufficiently  
5 answered that question to your satisfaction at the  
6 time that you filed your direct testimony in this  
7 case, certainly, by the time Mr. Crumrine filed his  
8 rebuttal testimony in this case, he did respond  
9 specifically to your question, did he not?

10 MR. TOWNSEND: Do you have a reference?

11 BY MR. STAHL:

12 Q. Well, I just want to ask the witness if he  
13 remembers first. Then --

14 A. I don't remember specifically. What I  
15 don't remember is -- is a history for the cost of  
16 service for this class. I don't remember that  
17 being presented in this case.

18 What happened -- what happened in --  
19 what were their costs earlier, what were their  
20 rates in the '99 case and the 2001 case relative to  
21 their costs, what has actually happened over the  
22 course of time, I don't remember that being

1 addressed.

2 Q. Regardless of the history, Mr. Bodmer, you  
3 know that Mr. Crumrine in his rebuttal testimony  
4 explained exactly why these over-ten-megawatt  
5 customers were being treated the way ComEd was  
6 proposing they be treated; is that correct?

7 And that -- I'm going to show you  
8 Mr. Crumrine's rebuttal testimony, ComEd Exhibit  
9 30.0 in a second and see if you remember seeing any  
10 of that in response to the issue you raised in your  
11 direct.

12 But you know he did that, didn't he?

13 A. I'm -- I -- it would be very helpful if I  
14 could he see that.

15 Q. I'm going to show you ComEd Exhibit 30.0,  
16 Pages 46 through 51 in which Mr. Crumrine addresses  
17 specifically the treatment of the over-ten-megawatt  
18 customer class.

19 MR. TOWNSEND: Do you have a copy for me?

20 MR. STAHL: No, I don't. It's just to refresh  
21 the witness's recollection. I'm not marking it as  
22 an exhibit.

1 THE WITNESS: And this --

2 MR. TOWNSEND: I'm just saying, if you're going  
3 to hand my witness something, I really would  
4 appreciate receiving a copy of it. I don't think  
5 that that's an unreasonable request.

6 MR. STAHL: I'm only --

7 MR. TOWNSEND: And, actually, it's a request  
8 that counsel for ComEd has repeatedly made that  
9 we've accommodated.

10 JUDGE HILLIARD: I think, as a matter of  
11 procedure, if you have only one copy, hand it to  
12 counsel first so he can review it before the  
13 witness looks at it.

14 MR. STAHL: I'll be happy to do that. And I'm  
15 sorry, your Honor.

16 JUDGE HILLIARD: In the future, it'd be a good  
17 idea to have multiple copies.

18 BY MR. STAHL:

19 Q. I'm going to ask you specifically,  
20 Mr. Bodmer, about testimony on Page 47 of that  
21 exhibit, if you'd like to turn there.

22 A. I'm there.



1       **Q.**     Okay.  You're familiar enough with that  
2     testimony, not only from just reviewing it here in  
3     the hearing room today, but generally from your  
4     work on this case to know that in his rebuttal  
5     testimony, Mr. Crumrine testified that the three  
6     largest customer classes were receiving a subsidy  
7     in the amount of about \$44 million or only about 44  
8     percent of their cost.

9                     That's in that testimony, is it not?

10       **A.**     That is what the -- Mr. Crumrine's  
11     testimony states.  I, of course, disagree with the  
12     term "subsidy."

13       **Q.**     Oh, I understand you disagree with it, but  
14     it is an answer to your question, is it not?

15       **A.**     Well, just to clarify, the -- the  
16     explanation or the piece of information that's  
17     really missing is exactly what happened to both the  
18     rates and the costs over the course of time.  That  
19     was not addressed in -- in -- in the testimony you  
20     just showed me.

21       **Q.**     He also goes on to say in that testimony,  
22     does he not, that the \$44 million subsidy compared

1 to total current revenues from those classes of  
2 only \$35 million, correct?

3 A. That's what he states, yes.

4 Q. And that with even a system average  
5 increase, those classes would still be receiving a  
6 subsidy in the amount of about \$37 million,  
7 correct?

8 A. That's -- that's in the testimony as well,  
9 yes.

10 Q. Now, I don't -- I don't believe you were  
11 here on Monday, were you, Mr. Bodmer, when  
12 Mr. Mitchell was testifying on behalf of ComEd?

13 A. I was not here, no.

14 Q. Did you review the transcript of  
15 Mr. Mitchell's cross-examination by Mr. Townsend?

16 A. I did not, no.

17 Q. I will tell you that Mr. Townsend spent a  
18 fair amount of time cross-examining Mr. Mitchell on  
19 the issue of rate shock.

20 You were --

21 MR. TOWNSEND: Objection, relevance. And that's  
22 certainly beyond the scope of this witness's

1 testimony.

2 JUDGE HILLIARD: Well, let's -- I think he's

3 getting -- that's a prefatory statement.

4 MR. STAHL: It is.

5 JUDGE HILLIARD: Let him finish his question.

6 MR. TOWNSEND: I'm sorry. So is there -- are

7 you asking him if he's --

8 MR. STAHL: I asked him if he was aware that Mr.

9 Mitchell -- as the judge indicated, it's a

10 prefatory question -- whether he's aware that

11 Mr. Mitchell was examined on the issue of rate

12 shock by Mr. Townsend.

13 THE WITNESS: I am very generally aware of that.

14 BY MR. STAHL:

15 Q. Is it your view, Mr. Bodmer, that the

16 members of REACT are being subjected to rate shock

17 by virtue of the Company's proposal in this case?

18 MR. TOWNSEND: I'm sorry. Okay.

19 Do you have a reference to his testimony

20 where he uses that term?

21 MR. STAHL: No, I don't believe he does. I'm

22 just curious if he believes it. If he doesn't

1 believe it, that's fine.

2 THE WITNESS: I was interested if I -- if I used  
3 that term.

4 I think a hundred percent increase would  
5 generally qualify as rate shock.

6 BY MR. STAHL:

7 Q. In your view, Mr. Bodmer, a shock implies  
8 something dramatic and unforeseen, doesn't it?

9 A. I'm trying to think of the general  
10 definition of a shock. I don't necessarily believe  
11 that a shock is unforeseen. If you put your hand  
12 in the electricity socket, you'll get an electric  
13 shock, but it's probably foreseen.

14 Q. Probably is foreseen, isn't it?

15 A. (Nodding.)

16 Q. Mr. Townsend asked Mr. Mitchell if a rate  
17 shock meant a sudden and substantial increase in  
18 rates.

19 Would you agree that's a fair working  
20 definition of rate shock, sudden and substantial?

21 A. Yes.

22 Q. In light of everything that happened in

1 0579 (sic) as reflected in Mr. Crumrine's testimony  
2 that you've been looking at from two years ago, you  
3 wouldn't really conclude that this increase that is  
4 now being requested for the over-ten-megawatt  
5 customers is sudden, would you?

6 MR. TOWNSEND: I'm going to object to the line  
7 of questioning being based on the definition of  
8 rate shock that Mr. Mitchell endorsed, because I  
9 believe that the definition that you just gave is  
10 incomplete as to what it is that Mr. Mitchell  
11 endorsed.

12 MR. STAHL: Well, I'm not suggesting one thing  
13 or another what Mr. Mitchell endorsed.

14 I simply asked him if he would agree  
15 with the characterization in your questioning of  
16 him that rate shock was something that was sudden  
17 and substantial and he said he did.

18 MR. TOWNSEND: But that wasn't the question.  
19 The question was two -- there were two components,  
20 I believe, to the question for rate shock that I  
21 asked Mr. Mitchell about.

22 One was a sudden and substantial

1 increase and the other was a sustained substantial  
2 increase in rates. I believe that both of those --  
3 I believe that he endorsed both of those.

4 MR. STAHL: It doesn't matter for my questioning  
5 what Mr. Mitchell testified to.

6 MR. TOWNSEND: It matters for -- yes, it does,  
7 Mr. Stahl, frankly. It does matter if you're going  
8 to try to refer back to that cross-examination  
9 which Mr. Bodmer has said that he was not around  
10 for and which Mr. Bodmer says that he has not  
11 endorsed and then try to draw some parallel between  
12 that cross-examination and this cross-examination.

13 Yes, it does make a difference.

14 MR. STAHL: Your Honors --

15 JUDGE HILLIARD: Could you read back Mr. Stahl's  
16 question, please.

17 MR. TOWNSEND: Your Honor, I believe it's two  
18 questions. The prior question also was based on  
19 Mr. Mitchell.

20 JUDGE HILLIARD: Read the last two questions  
21 please.

22 (Record read as requested.)

1 MR. TOWNSEND: So my objection is to both  
2 questions.

3 JUDGE HILLIARD: All right. Well, the objection  
4 is overruled, but we'll take note of the fact of  
5 the record that the definition of rate shock  
6 incorporated in Mr. Stahl's question is not  
7 identical with that to which the previous witness  
8 testified.

9 MR. TOWNSEND: Thank you, your Honor.

10 THE WITNESS: In listening to the question again  
11 from the perspective of ratepayer getting their  
12 bill in the mail, I think the -- when they get --  
13 if they would actually -- that's when rate shock  
14 occurs, then I think that's the -- certainly, when  
15 I would use the term "rate shock" is when you get  
16 your bill in the mail, they have not seen these  
17 rates before; when they do see these rates, I would  
18 call that rate shock.

19 BY MR. STAHL:

20 Q. Do you think United Airlines will first  
21 find out about the rate increase that's proposed in  
22 this case when it gets its bill in the mail,

1 assuming the rate increase is granted?

2       **A.**     If we want to be -- quibble about it, I  
3 think that's technically when the rate shock will  
4 occur. They've got -- they've obviously got people  
5 representing them in this case as do other  
6 customers in the last case.

7               The rates did not go up anywhere near  
8 this kind of level. So I would say perhaps not  
9 for -- perhaps when the -- when the final  
10 Commission order is -- is -- is approved or shortly  
11 thereafter, when they would get the bill. If it  
12 did increase to this level, that's when the rate  
13 shock would occur.

14       **Q.**     You'd agree, would you not, Mr. Bodmer,  
15 that the over-ten-megawatt customers have been on  
16 notice for several years that ComEd believed that  
17 they were not contributing their fair share towards  
18 total recovery of system costs and that it was  
19 important to bring those customers more closely in  
20 line with recovery of system costs, and that the  
21 Company was willing to work on mitigation proposals  
22 to help phase in that increase?



1                   You're aware of all of that, are you  
2 not, Mr. Bodmer?

3       **A.**     The key word in that sentence or that  
4 question is that that was ComEd's belief.

5                   I'm also aware that there are very many  
6 witnesses I see, amongst others, who have  
7 vigorously opposed the whole notion that there are  
8 subsidies for this class.

9       **Q.**     Do you know, Mr. Bodmer, what the total  
10 dollar impact on any of the members of REACT will  
11 be if ComEd's proposal in this case is adopted?

12       **A.**     I think I presented the impact on one  
13 customer in my testimony, yes.

14       **Q.**     And which customer is that?

15       MR. TOWNSEND: Are you asking for the reference  
16 in the testimony as to where it is?

17                   You're not asking for a customer name,  
18 are you, Mr. Stahl?

19       MR. STAHL: No. No. Just the dollar amount.

20       MR. TOWNSEND: Do you have a reference?

21       MR. STAHL: I'm asking the witness to find it  
22 for me.

1 JUDGE HILLIARD: It would move faster if you  
2 gave him a page number.

3 MR. STAHL: I don't have the reference, your  
4 Honor.

5 THE WITNESS: I think it's -- there's a  
6 discussion on Page 17 of a customer and the current  
7 tariffs for that customer yield or cost -- result  
8 in a cost to that customer of about a million  
9 dollars.

10 BY MR. STAHL:

11 Q. Is that the maximum impact that you're  
12 aware of?

13 A. I -- I -- I'm not aware that the -- there  
14 certainly could be higher impacts. I'm not aware  
15 that that is the maximum, no.

16 Q. Mr. Bodmer, would you agree that the dollar  
17 impact of a rate increase and the impact of that  
18 increase on a large over-ten-megawatt customer  
19 could be less than the impact felt by a \$72 a year  
20 increase in the customer charge to a multifamily  
21 residential customer?

22 MR. TOWNSEND: I'm sorry. I don't understand --

1 are you asking if a million dollars is less than  
2 \$72?

3 MR. STAHL: No. No. No, the impact on that  
4 particular customer, given the customer's size,  
5 usage and other characteristics.

6 Are you objecting, Mr. Townsend, or can  
7 we get an answer?

8 MR. TOWNSEND: Sure. Objection, relevance.

9 MR. STAHL: I think we're talking about the  
10 question of rate shock.

11 JUDGE HILLIARD: If he has an opinion, he can  
12 answer the question. It seems to me it's a  
13 rhetorical question, but...

14 THE WITNESS: I -- to answer that question, I'd  
15 really need to understand the -- I'm sorry to  
16 quibble, but what do you mean by impact? The  
17 impact on the ability to make a profit? The impact  
18 on the ability to keep operations going at a  
19 factory? The impact --

20 BY MR. STAHL:

21 Q. Yeah, I'll take that as an impact, the  
22 ability to continue operations.

1       **A.**     And I'm asked to compare the ability to  
2     continue operations with what impact on a  
3     multifamily customer?

4       **Q.**     Mr. Bodmer, if you can't answer the  
5     question, just tell me you can't answer it.

6       **A.**     I honestly can't. I'm not trying to be  
7     evasive. I'm just really --

8       MR. STAHL: That's fine.

9                     I have nothing further.

10      JUDGE HILLIARD: Do you have redirect?

11                     REDIRECT EXAMINATION

12                     BY

13                     MR. TOWNSEND:

14      **Q.**     Do you recall the line of questioning that  
15     Mr. Stahl had regarding the question in your  
16     testimony about what did the extra large customers  
17     do in order to justify such a massive and  
18     disproportionate rate increase?

19      **A.**     Yes.

20      **Q.**     Now, he pointed you to a number of pieces  
21     of testimony, correct, as part of that  
22     cross-examination?

1       **A.**     A couple, yes.

2       **Q.**     Did any of that testimony explain anything  
3     that the customers did in order to justify a  
4     massive and disproportionate rate increase?

5       **A.**     No change in -- there was nothing about the  
6     change in any behavior of the customer, no.

7       **Q.**     In all of that testimony from both the  
8     prior rate case and this rate case, there was  
9     nothing there that suggested that there was  
10    something that the customers did to justify that?

11      **A.**     Yes.   That's correct.

12      **Q.**     And you indicated to Mr. Stahl that you  
13    objected to the use of the word "subsidy"  
14    throughout that testimony.

15               What is your objection to the use of the  
16    word "subsidy"?

17      **A.**     The word "subsidy" presumes that the costs  
18    are measured accurately, and that's the -- kind of  
19    the entire basis of this testimony is to question  
20    the measurement of costs for this customer group.

21      **Q.**     Would you agree that the definition of rate  
22    shock can include not only a sudden and substantial

1    increase, but also a prolonged series of relatively  
2    high increases?

3       **A.**     Yes.

4       MR. TOWNSEND:  No further questions.

5       JUDGE HILLIARD:  Re-recross?

6       MR. STAHL:  Yeah, just briefly.

7                        RECROSS-EXAMINATION

8                        BY

9                        MR. STAHL:

10       **Q.**     Mr. Bodmer, Mr. Townsend asked you about a  
11    disproportionate impact.

12                        Would you agree that  
13    a-million-dollar-a-year bill impact for a large  
14    industrial customer with about \$5 billion in  
15    revenue would be equivalent to a -- the impact of a  
16    \$72-a-year customer charge impact on a residential  
17    customer making about \$360,000 a year?

18       MR. TOWNSEND:  Objection.  It's both asked and  
19    answered on direct and beyond the scope of  
20    redirect.

21       JUDGE HILLIARD:  Sustained.

22       MR. STAHL:  I have nothing further?

1 JUDGE HILLIARD: Okay. Thank you, Mr. Bodmer.

2 Mr. Jolly, there was reference in

3 Mr. Bodmer's testimony on your client's behalf to a

4 data request that proposed -- his response to a

5 ComEd data request that proposed alternatives to

6 something. Is that in the record?

7 MR. JOLLY: No, it's not.

8 JUDGE HILLIARD: Do you want to put it in the

9 record.

10 MR. JOLLY: Sure. I'll have to find it.

11 JUDGE HILLIARD: Can you identify it?

12 MR. JOLLY: Yeah. Grab my...

13 We'll mark this as City Redirect

14 Exhibit 1. I'm have to make additional copies. I

15 don't have --

16 (Whereupon, City Redirect

17 Exhibit No. 1 was

18 marked for identification

19 as of this date.)

20 JUDGE HILLIARD: And can you identify it for the

21 record?

22 MR. JOLLY: Yes. It's the City's response to

1 ComEd Data Request 4.05.

2 MR. STAHL: Ron, can I just see that for one  
3 minute, please?

4 MR. JOLLY: Sure.

5 MR. STAHL: We have no objection.

6 JUDGE HILLIARD: Okay. City Redirect Exhibit 1  
7 will be admitted.

8 (Whereupon, City Redirect  
9 Exhibit No. 1 was  
10 admitted into evidence as  
11 of this date.)

12 MR. JOLLY: And I'll provide copies --

13 JUDGE HILLIARD: Thank you.

14 MR. JOLLY: -- after lunch.

15 MR. STAHL: Your Honor, while we're admitting  
16 exhibits, I don't believe I had moved into evidence  
17 ComEd Cross Exhibit 12.

18 JUDGE HILLIARD: Any objections?

19 MR. JOLLY: Yeah, I would object that it's  
20 hearsay.

21 JUDGE HILLIARD: Well --

22 MR. JOLLY: And my understanding is ComEd



1 objected to a news article as being hearsay.

2 MR. STAHL: This is not being admitted for the  
3 truth of anything that is set forth in here. It's  
4 just simply --

5 JUDGE HILLIARD: Yeah, it'll be admitted.

6 MR. STAHL: Thank you.

7 (Whereupon, ComEd Cross  
8 Exhibit No. 12 was  
9 admitted into evidence as  
10 of this date.)

11 JUDGE HILLIARD: Next witness.

12 Have we -- has the schedule been changed  
13 since the -- do we have three more witnesses  
14 besides Mr. Lazare to get through today?

15 MR. FOSCO: Correct. Mr. Lazare, Mr. Baudino,  
16 Mr. Vite.

17 JUDGE HILLIARD: Do any of these people have  
18 trains to catch? Does Mr. Lazare to catch or a  
19 plane?

20 MR. FOSCO: Mr. Lazare's driving. We talked  
21 briefly to the Commercial Group's attorney. We  
22 thought we could start Mr. Lazare. And if it's not

1 proceeding relatively quickly, maybe at the start  
2 of this afternoon, put those two witnesses on, if  
3 needed.

4 JUDGE HILLIARD: Okay. All right. Fine.

5 MS. LUSSON: Your Honor, I'd indicate that we no  
6 longer have any cross for Mr. Lazare.

7 JUDGE HILLIARD: All right. Thank you.

8 JUDGE HAYNES: Anybody else waive cross?

9 MR. BALOUGH: Your Honor, in response to your  
10 question, I do not believe that I have any cross of  
11 Mr. Lazare.

12 Thank you, your Honor.

13 MS. POLEK-O'BRIEN: Your Honor?

14 JUDGE HILLIARD: Yes.

15 MS. POLEK: In addition to the witnesses that  
16 are listed on the schedule, we discussed yesterday  
17 we were going to put Alongi and Jones on at the end  
18 of today. They're available.

19 JUDGE HILLIARD: Right. If there's time, all  
20 right?

21 Mr. Lazare, whenever you're ready, I can  
22 swear you in. Would you raise your right-hand.

1 (Witness sworn.)

2 JUDGE HILLIARD: All right.

3 MR. FOSCO: Your Honor, for the record, Carmen  
4 Fosco on behalf of Staff.

5 PETER LAZARE,  
6 called as a witness herein, having been first duly  
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY

10 MR. FOSCO:

11 Q. Would you please state your name for the  
12 record and spell your last name.

13 A. Peter Lazare, Lazare.

14 MR. FOSCO: And, your Honor, since Mr. Lazare is  
15 also adopting testimony of another staff witness,  
16 I'm going to proceed first with the testimony first  
17 that he had prepared directly himself.

18 BY MR. FOSCO:

19 Q. Mr. Lazare, did you cause to be prepared in  
20 this proceeding direct testimony identified as ICC  
21 Staff Cross (sic) Exhibit 5, including Schedules  
22 5.1 and 5.2?

1       **A.**     Yes.

2       **Q.**     And did you also cause to be prepared in  
3     this docket rebuttal testimony identified as ICC  
4     Staff Exhibit 18.0, including Schedules 18.01  
5     through 18.03?

6       **A.**     Yes.

7       **Q.**     Were those -- is the information contained  
8     in there true and correct, to the best of your  
9     knowledge?

10      **A.**     Yes.

11      **Q.**     Do you have any corrections or changes?

12      **A.**     No.

13      **Q.**     Mr. Lazare, are you also adopting certain  
14     testimony in this proceeding you originally  
15     prepared by Mr. Mike Luth?

16      **A.**     Yes.

17      **Q.**     And have you reviewed what has been marked  
18     for identification as ICC Staff Exhibit 6.0,  
19     including Schedules 6.1 through 6.3, the -- what  
20     was labeled The Direct Testimony of Mike Luth?

21      **A.**     Yes.

22      **Q.**     And are you adopting that testimony as your

1 own testimony in this proceeding?

2 A. Yes.

3 Q. Do you have any corrections or changes to  
4 that testimony?

5 A. Yes, I do.

6 Q. Could you please describe those for the  
7 record.

8 A. The changes are on Page 7 of Staff  
9 Exhibit 6.0, and it's in the box just above Line  
10 103 for high voltage.

11 The correct first figure increase --  
12 decrease in allocation, it should be minus 15.0  
13 percent.

14 JUDGE HILLIARD: What is it now? What does it  
15 say --

16 THE WITNESS: It currently says plus 1.5 percent  
17 and that should be minus 15.0. And so it should be  
18 changed from positive 1.5 to minus 15.0.

19 And then in the next box to the right,  
20 1.99 percent should be changed to 19.9 percent. So  
21 the decimal place should be moved over one digit to  
22 the right.

1 JUDGE HAYNES: But it's still less than -- is it  
2 less?

3 THE WITNESS: Yes.

4 And then on 105 --

5 MR. BERNET: I'm sorry, Mr. Lazare. Could you  
6 tell us what exhibit you're referring to now?

7 THE WITNESS: 6.0.

8 MR. BERNET: Staff Exhibit 6.0?

9 JUDGE HILLIARD: Yes.

10 THE WITNESS: It's the direct testimony of Mike  
11 Luth.

12 MR. BERNET: Oh, okay. I'm sorry. Thank you.

13 THE WITNESS: And then on Line 105, instead of  
14 four one-hundredths, you should get rid of one of  
15 the zeros and it should be four-tenths of one  
16 percent.

17 BY MR. FOSCO:

18 Q. And with those changes, Mr. Lazare, would  
19 your answer to the questions contained in ICC Staff  
20 Exhibit 6.0 be as set forth therein?

21 A. Yes.

22 Q. And are you also adopting what was

1 identified as ICC Staff Exhibit 11.0, including  
2 Schedules 11.1 to 11.3, of which a corrected Page 2  
3 of 2 was filed on eDocket yesterday, identified as  
4 the supplemental direct testimony of Mike Luth?

5 **A.** Yes.

6 JUDGE HAYNES: What was corrected?

7 MR. FOSCO: Page 2 of 2 of Schedule 11.1.

8 We refiled the whole document on  
9 eDocket, but the only thing that was corrected  
10 was --

11 JUDGE HAYNES: Oh, okay.

12 MR. FOSCO: -- Page 2.

13 JUDGE HAYNES: Thank you.

14 MR. FOSCO: -- of Schedule 11.1.

15 BY MR. FOSCO:

16 **Q.** And is that the testimony true and correct,  
17 to the best of your knowledge?

18 **A.** Yes.

19 MR. FOSCO: Your Honor, we would move for the  
20 admission of ICC Staff Exhibit 5.0, including  
21 Schedules 5.1 and 5.2, the direct testimony of  
22 Peter Lazare; ICC Staff 18.0, including Schedules

1 18.01 through 18.03, the rebuttal testimony of  
2 Peter Lazare; ICC Staff Exhibit 6.0, including  
3 Schedules 6.1 to 6.3, the -- entitled The Direct  
4 Testimony of Mike Luth being adopted by Mr. Lazare;  
5 and ICC Staff 11.0, including Schedules 11.1  
6 through 11.3, the supplemental direct testimony of  
7 Mike Luth being adopted by Mr. Lazare.

8 All of those documents were filed on  
9 eDocket. And for the last one, a corrected copy  
10 was filed on May 1.

11 JUDGE HAYNES: Any objections?

12 Hearing none, those exhibits are  
13 admitted.

14 (Whereupon, Staff  
15 Exhibit Nos. 5, 6, 11 and 18 were  
16 admitted into evidence as  
17 of this date.)

18 MR. FOSCO: And we tender Mr. Lazare for  
19 cross-examination.

20 JUDGE HAYNES: Who's first?

21 MR. BERNET: Your Honor, ComEd has cross to  
22 Mr. Lazare, but we had prefer to wait to go to the



1 end.

2 For the record, Richard Bernet, Exelon  
3 Business Services Corporation, 10 South Dearborn,  
4 Suite 4900. For ComEd.

5 CROSS-EXAMINATION

6 BY

7 MR. JENKINS:

8 Q. Good morning, Mr. Lazare. Alan Jenkins on  
9 behalf of The Commercial Group.

10 A. Good morning.

11 Q. I just have a few questions.

12 In adopting Mr. Luth's testimony, you  
13 conclude that, I believe on his direct -- Page 7,  
14 if you like to refer to it and Line 115.

15 You conclude that ComEd is significantly  
16 under-recovering its costs of serving the extra  
17 large load and high-voltage classes, right?

18 A. Yes.

19 Q. And that's based on ComEd's cost of service  
20 study?

21 A. Yes.

22 Q. Okay. And I see on your testimony,

1 Page 18, you mention that Mr. Stowe of IIEC makes a  
2 good point with respect to the allocation of  
3 lower-voltage costs to higher-voltage customers,  
4 right?

5 A. Could you give me a specific reference?

6 Q. Page 18, your rebuttal.

7 A. Yes, I see that.

8 Q. Now, are you aware that not only under  
9 ComEd's cost study, but Mr. Stowe's recommended  
10 improvements to that study, that customers in the  
11 medium load, large load and very large load  
12 customers pay substantially more than ComEd's cost  
13 of serving those customers?

14 A. I -- it sounds correct, but I don't have  
15 the specific numbers.

16 Oh, okay. I have this before me. Could  
17 you give me the classes again?

18 Q. The medium load, large load and very large  
19 load classes.

20 A. Yes.

21 Q. Now, in adopting Mr. Luth's testimony, you  
22 recommend that the DFC for the medium, large, very

1 large, extra large and high-voltage classes should  
2 be averaged together and charged the same price per  
3 kilowatt of demand, correct?

4 **A.** That's -- that's the recommendation.

5 **Q.** Yes. And, in your opinion then in adopting  
6 that testimony, is that a reasonable rate design  
7 method for this case?

8 **A.** I think it would be reasonable to address  
9 the rate shock or some of the customers in that  
10 group who are -- would have received a very  
11 significant increase in percentage terms.

12 I -- in this docket, I do have an  
13 alternate and preferred rate design approach that  
14 would increase existing rate charges for all  
15 customer classes on an equal percentage across the  
16 board basis.

17 **Q.** Yes. And I'm just trying to understand,  
18 since you're adopting someone else's testimony, you  
19 still believe that Mr. Luth's method is a  
20 reasonable way of allocating, correct?

21 **A.** To address those rate shock concerns.

22 **Q.** That's yes?

1       **A.**     Yes.

2       **Q.**     Okay.  And you mention that -- well, let me  
3     direct you to your rebuttal, Page 21.  And I hope  
4     that now that I'm sitting at the utility table,  
5     I'll get a -- my own rate increase.

6               On Page 21, Line 468, you say there that  
7     any rate design approach that distributes these  
8     increases unequally may create feelings of  
9     unfairness among those ratepayers who are required  
10    to absorb above-average increases.

11              Isn't it true that Mr. Luth's proposal  
12    would more closely follow cost than above -- across  
13    the board increase?

14       **A.**     It would be closer to the Company's cost of  
15    service study results because it would affect a  
16    subset of classes while the other classes would  
17    have still been -- had their rates shaped by cost  
18    study results.

19       **Q.**     Are you aware that ComEd Exhibits -- these  
20    are the exhibits along with the Alongi-Jones  
21    panel's testimony -- 32.1 and 45.1 demonstrate that  
22    an across the board 20.9 percent increase would

1 impose \$63.6 million of subsidies on the medium --  
2 on the small, medium, large and very large load  
3 classes?

4       **A.** I don't have the figures before me, but I  
5 don't have any reason at this point to disagree  
6 with those results from the exhibit based upon the  
7 Company's cost of service study.

8       **Q.** Okay. And would you be surprised to  
9 also -- to know that those same exhibits show that  
10 50 percent of the rate increase for the very large  
11 load classes under that across the board raise  
12 would be composed of rate subsidies to other  
13 classes?

14       **A.** Based upon the Company's cost of service  
15 study, I wouldn't -- don't have any reason to  
16 suggest otherwise.

17       **Q.** Now, you can see why a customer that's  
18 already overpaying for their electricity would  
19 consider it unfair to pay an even higher subsidy as  
20 a result of an across the board increase?

21       **A.** I can understand customers who feel that  
22 they're paying more than their fair share of costs

1 would feel that was unfair, yes.

2 Q. And do you believe it's fair for a school  
3 or a homeless shelter to subsidize the electric  
4 rates of largest load customers on ComEd's system?

5 A. I think in the -- when looking at the  
6 increase as a whole in looking at all classes, I  
7 think there's a lot of feelings of unfairness among  
8 customers across the board, whether they're above  
9 or below the system average.

10 And I think that depending how you  
11 define fair, that, you know, one conception (sic)  
12 would say something's unfair. Another one would  
13 say it is fair. And my take is that based upon the  
14 total context of this rate case, the most fair  
15 approach is across the board.

16 Now, that does not mean that it will not  
17 create feelings of unfairness as you've just  
18 described, but it's a matter of sort of a hierarchy  
19 of, you know, what's fair and what's less fair.  
20 But in any of these hierarchies, there are going to  
21 be customers that are going to feel it is unfair.  
22 And, you know, from their perspective, they can

1 make a reasonable argument.

2                   And that homeless shelter could make an  
3 argument that, yes -- and from their perspective,  
4 yes it does look like it's unfair.

5       **Q.**     Okay. Thank you.

6                   Do you believe that one fair of way of  
7 allocating costs or -- or allocating -- or setting  
8 rates -- let me start over.

9                   Do you believe that one fair way of  
10 setting rates would be to set them simply on cost?

11       **A.**     That is the notion of fairness that the  
12 Commission has -- has extensively depended upon,  
13 yes.

14       MR. JENKINS: Okay. Thank you.

15                   No further questions.

16       JUDGE HILLIARD: Next questioner.

17                   CROSS-EXAMINATION

18                   BY

19                   MR. MUNSON:

20       **Q.**     Good morning, Michael Munson on behalf of  
21 the Building Owners and Managers Association of  
22 Chicago.

1                   Good morning, Mr. Lazare.

2       **A.**     Good morning.

3       **Q.**     I want to focus for a little bit on your  
4    rebuttal testimony beginning at Line 412, Page 18.

5                   You would agree that bill impact have  
6    ben and will continue to be an overriding concern  
7    for ratepayers, correct?

8       **A.**     Yes.

9       **Q.**     And you also state that steps have been  
10   taken to mitigate these impacts, right?

11      **A.**     Yes.

12      **Q.**     Including proposed, anyway, an across the  
13   board increase in this case to mitigate rate  
14   impacts, correct?

15      **A.**     It would face for some; but, obviously,  
16   increases for others. You know, it's a zero-sum  
17   game. So...

18      **Q.**     Fair enough.

19      **A.**     You know, it's less mitigation; more sort  
20   of spreading it out. Evenly distributing it.

21      **Q.**     And steps were taken to mitigate in the  
22   past, correct, including opening of docket -- the



1 rate mitigation docket, 07-0166, right?

2 A. Yes.

3 Q. And you testified in that case, correct?

4 A. Yes.

5 Q. And before that, 500 million, you state,

6 was provided in rebates to ComEd ratepayers, right?

7 A. Yes.

8 Q. And do you know how much of that 500

9 million went to nonresidential space heating

10 customers?

11 A. I do not remember.

12 Q. Do you know how many -- how much of that

13 money went to nonresidential customers, in general?

14 A. I don't remember -- I just remember that

15 the majority -- significant majority went to

16 residential customers.

17 Q. You would agree that another rate

18 mitigation impact could be the 15 to 20 percent

19 rate decrease residential customers received

20 throughout the transition period?

21 A. That was a past rate mitigation, yes.

22

1 (Change of reporters.)

2 Q. You would agree that a majority of the rate  
3 mitigation benefits ordered in 07-0166 were geared  
4 towards residential customers and small commercial?

5 A. Yes, if I remember the key.

6 Q. No, I mean, please explain.

7 A. If I remember, the key item was  
8 redistributing charges for electric space heating  
9 customers from the winter to the summer period. So  
10 it was relatively -- it was limited in terms of the  
11 rate mitigation proposals that were accepted in the  
12 case.

13 Q. And by mitigating the electric space  
14 heating customers, you're saying that -- your  
15 referring to residential electric space heating  
16 customers?

17 A. Yes. And it was really a shift from one  
18 season to the next. So on overall terms, it was  
19 not a reduction, per se.

20 Q. Well, regardless, the mitigation was  
21 applied to the distribution rate base -- or I'm  
22 sorry -- distribution rate; correct?

1       **A.**     I think -- I'll have to double-check.  It  
2 might have been the supply charge.

3       **Q.**     But you -- and you state you testified in  
4 that case?

5       **A.**     Yes.

6       **Q.**     And you testified that BOMA would have the  
7 opportunity to provide more complete arguments in  
8 the next case, which is this case; right?

9       **A.**     Yes.

10      **Q.**     And, in fact, the final order in that case  
11 adopted your position regarding BOMA would have an  
12 opportunity -- and I can -- you'd accept that  
13 subject to check?

14      **A.**     That sounds right.

15      **Q.**     Okay.  Did you review the testimony  
16 provided by BOMA Chicago in this case?

17      **A.**     Yes.

18      **Q.**     Did you review Mr. Sharfman's testimony?

19      **A.**     I read that a while back.  The one I --

20      **Q.**     Let me ask you this:  You would agree  
21 that -- subject to check that he showed as high as  
22 a 54 percent percentage increase in distribution

1 rates for nonresidential customers above 400 kW for  
2 the period 1999 to 2007, subject to check?

3 A. Yes.

4 Q. And you agree that Mr. Sharfman used ComEd  
5 standard load profiles that represent those  
6 customer classes and historical ComEd rates to  
7 construct his analysis?

8 A. I don't remember.

9 Q. Would you accept that subject to check? I  
10 can show you if you --

11 A. Yeah, it probably would help to see.

12 MR. MUNSON: May I approach?

13 JUDGE HAYNES: Yes.

14 BY MR. MUNSON:

15 Q. The question was: To arrive at those  
16 percentages Mr. Sharfman used ComEd standard load  
17 profiles and historical ComEd rates to construct  
18 his analysis?

19 A. Do you have a page that you can refer me  
20 to?

21 Q. Okay. Let's look at Page 8 of 9. This is  
22 BOMA Chicago 2.0 testimony of Mr. Sharfman.

1       **A.**     And what line.

2       **Q.**     Beginning on Line 113.

3       **A.**     Okay.

4       **Q.**     Can you read the answer on -- the question

5     is, what types of rates did you utilize in your

6     analysis?

7       **A.**     Yes, I see the Q and A there.

8       **Q.**     Okay.  You agree that ComEd previously

9     distinguished between space heat and nonspace heat

10    customers for nonresidential customers, correct, as

11    former Rider 25?

12      **A.**     Yes.

13      **Q.**     Currently ComEd in the cost of service

14    analysis provided in this case currently

15    distinguishes between residential space heat and

16    nonspace heat rates; correct?

17      **A.**     Yes.

18      **Q.**     And for the single family distinguishes and

19    also for the multifamily?

20      **A.**     Yes.

21      **Q.**     Do you know if the customers who were

22    distinguished -- the former Rider 25 customers, do

1 you know whether they had separate metering  
2 equipment in their premises for space heat versus  
3 nonspace heat customers?

4       **A.**     I don't remember or -- I don't remember.

5       **Q.**     You don't recall that the -- to heat with  
6 electricity ComEd separately metered the heating  
7 load in a building and differentiated on a cost  
8 basis between summer and winter for that meter?

9       **A.**     I would need a little refresher on that.

10       **Q.**    If that's true, would you agree that that's  
11 different infrastructure in a building, the space  
12 heat metering equipment for nonresidential space  
13 heat customer versus one that does not have that  
14 equipment?

15       **A.**     I'm not clear on your question.

16       **Q.**    Would you agree that if -- if I'm correct  
17 that ComEd did install a separate meter to measure  
18 the heating load in a building for nonresidential  
19 customers and charged that -- those customers  
20 differently seasonally, that that is different  
21 infrastructure than they would have on a building  
22 that does not heat with electricity?

1       **A.**     When you mean "different infrastructure" do  
2     you mean that they would -- the infrastructure  
3     required by ComEd to serve the load for the meter  
4     on that just measured heating load, or are you  
5     talking about the meter itself? I'm not familiar  
6     about which infrastructure you're referring to.

7       **Q.**     The metering infrastructure, for one.

8       **A.**     Well, clearly if you've added another meter  
9     that would be in addition to infrastructure.

10      **Q.**     Would you suspect that that infrastructure  
11     would still be in place today?

12      **A.**     I would say it's possible.

13      MR. MUNSON:   If I could have one minute.

14     BY MR. MUNSON:

15      **Q.**     You would agree that there is a cost  
16     differential between residential space heat and  
17     nonspace heat customers; correct?

18      MR. FOSCO:    Just to be -- we are still talking  
19     distribution cost?

20      MR. MUNSON:   That's correct.

21      THE WITNESS:   I would say there are load  
22     differences that certainly could lead to cost

1 differences.

2 BY MR. MUNSON:

3 Q. Certainly.

4 But are you aware that Mr. Heintz  
5 testimony on behalf of ComEd differentiated between  
6 single family nonspace heat and single family space  
7 heat, correspondingly for multifamily, and there  
8 were cost differentiations between those two types  
9 of customers in the study?

10 A. Yes.

11 Q. Is there any reason to believe that there  
12 is not a cost of service difference between  
13 nonresidential space heat customers and space heat  
14 customers?

15 MR. FOSCO: I think I'm going to object because  
16 I think the testimony was we don't have that rate  
17 today. Are you asking him at a prior point in  
18 time?

19 MR. MUNSON: No, I'm asking not on a rate. I'm  
20 asking for a cost of service. Whether he would --  
21 would he -- would establish that the residential  
22 there's a cost of service differential and I asked



1 him whether he -- does he have any reason to  
2 believe that that differential wouldn't exist with  
3 nonresidential customers?

4 THE WITNESS: It's certainly possible.

5 BY MR. MUNSON:

6 Q. But ComEd did not differentiate it in its  
7 cost of service study; correct?

8 A. Correct.

9 Q. Would you recommended if there is a cost  
10 differential to differentiate in the cost of  
11 service study?

12 A. The problem is that with cost studies just  
13 the way that they're constructed as you have to  
14 balance just sort of the number of classes, which,  
15 you know, can create a certain burden and the need  
16 to acquire more load data against, you know, the  
17 potential cost differences that might result from  
18 performing that breakdown of the noncommercial  
19 class.

20 So I think at this point I'm not ready  
21 to say that there is a basis for the dividing up  
22 the class for the purpose of cost of service study.

1 Just because I'm not ready to say that the benefits  
2 in terms of identifying separate costs would be  
3 outweighed by the cost of the greater detail in the  
4 study.

5 Q. Right.

6 And you're saying you're not prepared to  
7 say that because you haven't seen that  
8 differentiated out; correct?

9 A. Yes.

10 Q. And if it is true that there is a cost  
11 differentiation between the two types of -- between  
12 space heat and nonspace heat and nonresidential  
13 customers, if there is a cost differential, one of  
14 those is subsidizing the other; correct?

15 MR. FOSCO: If we can just be clear, you're  
16 asking him hypothetically if -- thank you.

17 THE WITNESS: Well, that's possible. But also  
18 let's say both classes were earning below the  
19 system average, then you could say that other  
20 classes are subsidizing both classes. So it really  
21 would depend on the specific cost of service  
22 results.

1 BY MR. MUNSON:

2 Q. Let me just understand this. It's possible  
3 that one of those -- one is subsidizing the other?

4 A. That's certainly possible.

5 Q. And we don't know which way that would be  
6 either, do we? We don't know whether the space  
7 heat customers are subsidizing the nonspace heat or  
8 vice versa?

9 A. That would require a cost analysis.

10 Q. But given that with the residential rates,  
11 the space heater lower, it's reasonable to assume  
12 that the cost of service for the space heating  
13 nonresidential would be lower as well?

14 A. It would depend on the degree of similarity  
15 between -- in the relationship between space  
16 heating and nonspace heating nonresidential  
17 customers with residential customers. If they were  
18 similar in their relative characteristics then you  
19 could maybe say that it would be lower cost on a  
20 unit basis to serve.

21 Q. But we'd need that information from ComEd  
22 to make that determination; correct?

1       **A.**     That would be necessary.

2       **Q.**     Just a couple more economics questions, if

3     you will.

4                 Would you agree that in competitive

5     markets prices will clear at marginal costs?

6       **A.**     That's the theory.

7       **Q.**     Would you agree that marginal costs are

8     used to evaluate energy efficiency investments?

9       **MR. FOSCO:**   Your Honor, I guess I'm just not

10    sure how this is relevant to his testimony.

11       **JUDGE HILLIARD:**   Sustained.

12       **MR. MUNSON:**   It's foundation.

13                 Nothing further.

14       **JUDGE HILLIARD:**   Thank you.

15       **JUDGE HAYNES:**   Next.

16       **JUDGE HILLIARD:**   Is there any next?   Does Metra

17    have any questions for the witness?   DEO have

18    questions?

19       **MF. BRUDER:**   Yes, we do.

20

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. BRUDER:

4 Q. Good morning.

5 A. Good morning.

6 Q. I was going ask at the outset -- I'm sorry  
7 I just noticed this. I see that I don't have a  
8 copy of Mr. Luth's rebuttal. Might you all have a  
9 copy I could use for...

10 A. Did you ask for his rebuttal testimony?

11 Q. Yes.

12 A. He didn't file rebuttal testimony.

13 Q. Okay. Then I've got something really  
14 wrong. Okay.

15 A. I hope.

16 Q. Okay. Mr. Lazare's rebuttal, Page 18, if  
17 you would.

18 JUDGE HAYNES: So just for the record then, I  
19 think that when you were introducing the exhibits  
20 instead of saying, Luth's supplemental direct, you  
21 said, Luth's rebuttal.

22 MR. FOSCO: Oh, if I did, I apologize. It's

1 direct and supplemental direct.

2 JUDGE HILLIARD: I have it as supplemental  
3 direct.

4 JUDGE HAYNES: I apparently heard the same thing  
5 as the attorney.

6 Okay. Great. Thank you.

7 MR. FOSCO: My apologies if I made that  
8 misstatement.

9 BY MF. BRUDER:

10 Q. On Page 18, Lines 406 to 407, you say the  
11 Commission accepted ComEd's proposed cost of  
12 service study in the 05 docket without the  
13 distinctions between primary and secondary  
14 distribution costs that are advocated here by IIEC  
15 and by the Department?

16 A. Yes.

17 Q. Now, the Commission accepted that study for  
18 the purpose of allocating revenues between  
19 residential and nonresidential customers and for  
20 the purpose of designing rates. Did the Commission  
21 adopt that study for the purpose of allocating  
22 revenues among the various residential classes?

1       **A.**     I'm sorry what was the last?

2       **Q.**     Among the various residential classes?

3       **A.**     I don't remember specifically.

4       **Q.**     Okay. Then you don't remember either

5 whether it adopted the study for purpose of

6 allocations among the various nonresidential

7 classes?

8       **A.**     I remember that they found that to be a

9 reasonable basis for remaking. I don't remember

10 the specific rate design proposals that -- exactly

11 how they were developed based upon the cost study.

12       **Q.**     Now, when we look at the Commission's 2005

13 final order, we find that it didn't just adopt the

14 2005 study for purposes of designing rates. What

15 it said was that it was adopting the study for the

16 purposes of designing rates except to the extent

17 necessary to comply with other findings in that

18 2005 order. Are you aware of that, sir?

19       **A.**     In that case, I did not testify on rate

20 design specific issues so I don't have enough

21 first-hand knowledge of how my rate design

22 testimony ended up in the rates that were approved

1 in that case. So, you know, if it says that in the  
2 order, you know, I'm not going to disagree with it,  
3 but I don't have any specific knowledge of a  
4 specific -- of doing -- of that rate case.

5 Q. What my question was whether you were aware  
6 that that language was in the order. It would  
7 appear that you were not; is that correct?

8 A. I didn't remember specifically, but...

9 Q. Then you couldn't tell me then -- that was  
10 limiting language, and then you couldn't tell me  
11 what the effect of that limiting language was on  
12 what the Commission actually adopted and it did not  
13 adopt in regard to that 2005 cost of service study;  
14 isn't that right?

15 A. The key point I remember was that was the  
16 cost of service study analysis that was approved by  
17 the Commission in the case and that no alternative  
18 was selected over the Company's study. And whether  
19 there were limitations on the use of that study,  
20 I'm not as familiar.

21 Q. Well, when you wrote here in this  
22 testimony or this testimony that you you adopted



1 that the Commission accepted this proposed cost of  
2 service study, did you write that with an awareness  
3 of this significant limiting language, sir?

4 **A.** As I said, I was aware that that was the  
5 study adopted in the case. And that was the basis  
6 for my statement.

7 Now, in terms of how the rates were  
8 specifically designed from that cost study, I was  
9 not as familiar.

10 **Q.** So you didn't know about that limitation  
11 when you wrote this statement, isn't that right, or  
12 you didn't take that into account when you wrote  
13 it?

14 **A.** Can you maybe -- I'm not clear on exactly  
15 what you're...

16 **Q.** Sure.

17 What you said here is that the  
18 Commission accepted the 2005 cost of service study  
19 which Commonwealth Edison filed. What I'm saying  
20 is that the Commission, in fact, accepted that but  
21 it accepted it with limitations that are generally  
22 set out in the limiting language, which I have read

1 to you.

2                   It would appear to me that when you  
3 wrote the statement that the Commission had  
4 accepted that the cost of service study you were  
5 not aware or you ignored the fact that there was  
6 that limiting language. My question is yes or no,  
7 were you aware of that language? And if so, did  
8 you take it into account when you wrote that  
9 statement?

10       **A.**    I did not specifically remember that  
11 limiting language when I said that they did accept  
12 this -- ComEd's cost of service study for --

13       **Q.**    Thank you.

14                   Looking again at this Page 18 of your  
15 rebuttal testimony, I'm starting here at Line 408  
16 and following. When you say the Commission may not  
17 consider this failure to distinguish between the  
18 primary and the second cost as sufficient reason to  
19 reject the study -- do you have that before you,  
20 sir?

21       **A.**    Yes.

22       **Q.**    Okay. Just to clarify, when you use the

1 phrase "may not," you mean that the Commission is  
2 empowered to decide not to reject the study, you do  
3 not mean that the Commission is prohibiting from  
4 deciding to reject the study; is that correct?

5 A. Correct.

6 Q. I'm going to turn now to Mr. Luth's -- am I  
7 pronouncing that right, Luth?

8 A. I'm sorry?

9 Q. Luth, you've adopted Mr. Luth's testimony?

10 A. Yes.

11 Q. Okay. I'm looking beginning at Page 7 of  
12 that testimony?

13 MR. FOSCO: Of his direct testimony or...?

14 MF. BRUDER: Direct, yes.

15 MR. FOSCO: Thank you.

16 THE WITNESS: Okay.

17 BY MF. BRUDER:

18 Q. Okay. At the bottom of that page, Line 115  
19 and following you say that ComEd is significantly  
20 under recovering its cost of service allocated to  
21 extra large load and high voltage customers.

22 Now, going to Page 8, you say that that

1   assertion is based on the surrebuttal cost of  
2   service study in Docket 05-0597.   Mr. Lazare, is  
3   the assertion based on anything else other than the  
4   surrebuttal cost of service study in the 05 docket?

5       **A.**   Well, the assertion is supported by results  
6   of cost of service studies in this docket.

7       **Q.**   I'm sorry.   I couldn't hear.   The cost of  
8   service studies in what?

9       **A.**   In current docket.

10      **Q.**   Okay.   And is there any support for it at  
11   all in your opinion other than the 05 study and the  
12   07 study?

13      **A.**   Those are the key factors, yes.   Those are  
14   basis of support.   So I don't have any other basis  
15   of support for that.

16      **Q.**   And was that 05 surrebuttal cost of service  
17   study different in any meaningful way from the 07  
18   study that we have before us in this proceeding?

19      **A.**   My understanding is that they were based  
20   upon consistent cost study approach with the  
21   Company's --

22      **Q.**   And what is the basis for that

1 understanding, sir?

2       **A.**     I think is based upon the Company's  
3 testimony.

4       **Q.**     Is it based on anything else?

5       **A.**     Well, Staff has reviewed the study and  
6 found the consistency.

7       **Q.**     Let's return now, if you would, to your  
8 rebuttal testimony at Page 18. There you point out  
9 that the 05 study did not include certain  
10 distinctions between primary and secondary  
11 distribution costs. That's Lines 407 through 408.  
12 Do you have that?

13       **A.**     Yes.

14       **Q.**     Now, is it true that all else remaining the  
15 same, the cost of service study which Commonwealth  
16 Edison filed in this proceeding would more  
17 accurately reflect the true costs of serving the  
18 various large user classes if the study included  
19 those distinctions between primary and secondary  
20 distribution costs?

21       **A.**     I would say if it included those  
22 distinctions it would be more accurate.

1       **Q.**     Now, if -- suppose that as is the case  
2     here, there is not -- there are not those  
3     distinctions between primary and secondary  
4     distribution costs. That being the case, some  
5     portion of the costs of the secondary distribution  
6     system are allocated to customers who take at the  
7     highest voltage levels, that is 69 kV and above; is  
8     that correct?

9       **A.**     Yes.

10      **Q.**     And the fact is that customers who take it  
11     69 kV or higher do not use and do not benefit from  
12     and do not drive the costs of the secondary  
13     distribution system; is that correct?

14      **A.**     That's my understanding.

15      **Q.**     Then, Mr. Lazare, to tie it up, is it fair  
16     to say that it's really improper in terms of cost  
17     of service principles to allocate costs of the  
18     secondary distribution system, that is the system  
19     below 69 kV, to customers who take service at 69 kV  
20     or above?

21      **A.**     Well, I would say if the cost distinctions  
22     could be made, it would be more appropriate to

1 separate out those costs.

2 Q. Well, I'm going to put the question again.  
3 I think that's a fair response, but I did use the  
4 word "improper."

5 And I will ask you in terms of cost of  
6 service -- of principles, the basic cost of service  
7 principle is that a cost drive -- that cost of a  
8 basis for rates. Is it not improper to allocate  
9 costs of secondary distribution system to customers  
10 who take in a matter that precludes their ever  
11 using or benefitting from or driving the cost of  
12 that secondary system?

13 A. I would say if those costs can be broken  
14 out it would be improper to allocate them to the  
15 larger customers.

16 Q. Now, this may or may not be a question that  
17 you're up on. If you're not, please just say that  
18 you're not.

19 We had in the 05 case an order dated  
20 July 26, 2006. It was referred to at the time as a  
21 final order. In that order, the Commission  
22 directed Commonwealth Edison to bill standard

1 voltage loads of high-voltage customers separately  
2 at the applicable standard voltage rate.

3 Now, are you aware of that? Are you up  
4 on that? Or are you not a person who should be  
5 answering questions about that? If you're not up  
6 on the 05 order, that's the end of this line of  
7 questioning.

8 A. I'm not familiar.

9 Q. Okay. Now, did Mr. Luth make a proposal to  
10 average the distribution facility charges for  
11 several different rate classes?

12 A. Yes.

13 Q. And you've adopted that proposal?

14 A. Yes.

15 Q. And those rate classes are medium, large,  
16 very large, extra large and high-voltage below 10  
17 kV?

18 A. You said medium, large, very large, extra  
19 large and high voltage?

20 Q. Correct.

21 A. Correct.

22 Q. And you propose, do you not, to have the



1 same distribution facility charge for each of those  
2 classes that is \$5.85 per kW per month?

3       **A.**     That is the proposal. I think as I  
4 previously stated, our preference at this juncture  
5 would be to increase rates for all rate classes on  
6 an equal percentage across the board basis.

7               But as a secondary proposal, I would say  
8 this is -- would be our proposal to be adopted.

9       **Q.**     Okay. I just wanted to go over what the  
10 effects of that proposal might be. I don't think  
11 this will take too long.

12              For the extra large class, the charge  
13 now is presently \$2.46. Are you aware of that or  
14 could you accept it subject to check?

15       **A.**     I'll accept it subject to check.

16       **Q.**     Then if that charge went from \$2.46 to  
17 \$5.85, we'd have a 138 increase for that class; is  
18 that about right?

19       **A.**     Sounds about right.

20       **Q.**     Okay. And for high voltage which would go  
21 from \$2.22 to \$5.85, we'd have 164 percent  
22 increase; approximately right?

1       **A.**     Sounds about right.

2       **Q.**     Okay.   But for the large we would have an  
3   increase of only about 17 percent -- well, it goes  
4   from \$5.01 to \$5.85, about 17 percent; does that  
5   sound about right?

6       **A.**     Yes.

7       **Q.**     Now, again, I understand that you said you  
8   prefer the across the board.   But I did want to  
9   ask, do you consider those mark changes, those very  
10  differences in the percentage increases cost  
11  justified in any way?

12       **MR. FOSCO:**   Can we just be clear.   Are you  
13  asking him if the across the board increase are  
14  cost justified?

15       **MF. BRUDER:**   No.   No.   I'm talking about this  
16  other thing to average this reason facilities  
17  charges among the classes.

18       **MR. FOSCO:**   Thank you.

19       **THE WITNESS:**   I think the averaging process is  
20  an effort to mitigate some of the increases for  
21  certain customer classes as compared to -- be it  
22  directly reflective of costs.

1 BY MF. BRUDER:

2 Q. It's not driven by cost, it's driven by  
3 impact; is that right?

4 A. Right.

5 Q. Now, I'm going to ask how this proposal  
6 would work out in practice. This is the last  
7 question I have.

8 Please consider two hypothetical  
9 customers, each has the same load factor, the same  
10 maximum peak. The only difference is the levels of  
11 service at which the two customers take. One is  
12 500 -- 5,000 kilowatt customer that's taking at  
13 standard voltage and would be in the very large  
14 class.

15 Is it true that a customer taking at  
16 that voltage is likely to be taking at 12.5 kV?

17 A. Well, what was the last part? I didn't  
18 catch the end of your question.

19 Q. Is a customer -- we're talking about a  
20 hypothetical customer, a 5,000 kW customer taking  
21 at standard voltage. Is it likely that customer is  
22 taking at 12.5 kV?

1       **A.**    I don't have a reason to disagree with you.  
2    I -- maybe I don't have a basis to say --  
3       **Q.**    Let's put it another way.  What level do  
4    you reckon -- what level or possible levels do you  
5    reckon such a customer would be taking at?  
6       **A.**    Something below, you know, below primary.  
7    So some level of secondary system.  
8       **Q.**    So that it be 34 or change or 12.5 or...?  
9       **A.**    It sounds possible.  Sounds reasonable.  
10      **Q.**    Okay.  Now, I'm thinking of the other  
11   hypothetical customer.  This is a 5,000 kV maximum  
12   customer, too, in the high voltage less than megs  
13   class.  This customers is taking at 138 kV.  Is it  
14   true that a customer that takes at 138 kV never  
15   uses any of the 34.5 or 12.5 system?  
16      **A.**    That sounds correct.  
17      **Q.**    Doesn't drive any of those costs?  
18      **A.**    Yes.  
19      **Q.**    But under your proposal, these two  
20   customers would pay the \$5.85 that same charge --  
21   that same facility's distribution charge?  
22      **A.**    That's correct.

1       **Q.**     And if that were the case, the one customer  
2     would wind up subsidizing the other, would it not?

3       **A.**     It's possible.

4       **Q.**     Sir?

5       **A.**     It's possible.

6       **Q.**     Well, it's inevitable, isn't it, given  
7     those facts?

8       **A.**     Well, if you have a situation where both  
9     customers were earning below the system average  
10    rate of return, I would say that other customers  
11    would be subsidizing those customers and just  
12    subsidizing maybe one customer more than the other  
13    customer.

14      **Q.**     Just tell me the premise of that again.

15      **A.**     Okay. Let's say the class that each of  
16    those hypothetical customers that you just  
17    identified -- let's say the class as a whole -- or  
18    the classes for each of those customers were  
19    earning in the cost study below the system average  
20    rate of return, then the set of one customer  
21    subsidizing another customer, I would say that  
22    other customers would be subsidizing both

1 customers, just subsidizing one customer more than  
2 another.

3 Q. But if we for purposes of this hypothetical  
4 question consider that there are only those two  
5 classes, then isn't it a fact that the one will  
6 inevitably be subsidizing the other?

7 A. That's correct.

8 MF. BRUDER: Could you just give me a minute to  
9 look at my notes. I don't think I have anything  
10 else.

11 Nothing further. Thank you.

12 JUDGE HILLIARD: Judge Haynes wants to go to  
13 lunch now.

14 (Whereupon, a lunch brake was taken.)

15 CROSS-EXAMINATION

16 BY

17 MR. ROBERTSON:

18 Q. Good afternoon, Mr. Lazare. My name is  
19 Eric Robertson. I represent the Illinois  
20 Industrial Energy Consumers.

21 A. Good afternoon.

22 Q. And I'd like you to take a look at Staff

1 Exhibit 6.0, your direct testimony -- or the direct  
2 testimony of Mr. Luth.

3 A. Was there a page?

4 Q. Page 9, Lines 137 to 149.

5 Okay. Now, I understand that the  
6 averaging of the distribution facilities charges  
7 discussed there is really a rate mitigation  
8 proposal; is that correct?

9 A. Yes.

10 Q. And I also understand that your preferred  
11 approach is an across the board increase?

12 A. Yes.

13 Q. Why do you prefer your approach over this  
14 approach?

15 A. Well, first off, it's more inclusive. It  
16 covers all rate classes not just these classes that  
17 are listed on this page. And, secondly, as I  
18 discussed in my rebuttal testimony, there have been  
19 a lot of circumstances in recent times that have  
20 made the issue of bill impacts the overriding  
21 concern for rate making. And I think it's an  
22 overriding concern for all customers, retail

1 customers, small and large having to deal with the  
2 new paradigm in terms of electric rates.

3 Q. Would an across the board increase as you  
4 propose also maintain the current rate structure?

5 A. Yes.

6 Q. And on relative basis, it would maintain  
7 the differentials within the current rates?

8 A. Yes.

9 Q. Would that be another reason to help -- to  
10 adopt the across the board increase in your -- over  
11 this other proposal, in your opinion?

12 A. I think -- I don't know. I don't know if  
13 my specific objective is to maintain current  
14 differentials. I think it's really to as equally  
15 as possible distribute the burden of the increase.

16 Q. All right. Now, would you take a look at  
17 your Schedule 6.3 in Exhibit 6.0.

18 A. Okay.

19 Q. All right. Now, this reflects the  
20 Company's original proposal, does it not?

21 A. Yes.

22 Q. And there is no other schedule in your



1 rebuttal or supplemental direct testimony which  
2 updates this information?

3       **A.**     That's correct.

4       **Q.**     Now, is it your understanding that this  
5 averaging proposal by Mr. Luth was due in part to  
6 the fact that the Company's proposed DCFs were in  
7 the same general upper \$5.00 to low, \$7.00 range of  
8 prices?

9       **A.**     Let me just go directly to his testimony so  
10 I don't...

11               The focus of the argument for it is to  
12 temper some significant percentage increases. For  
13 example, he mentions ComEd's proposed 140.4  
14 increase in revenues from extra large load  
15 customers.

16       **Q.**     Now, would you -- if I can find it here --  
17 be willing it accept, subject to check, that the  
18 current distribution facilities charge for high  
19 voltage customers over 10,000 kW is a \$1.09?

20       **A.**     Yes.

21       **Q.**     Would you be willing to accept, subject to  
22 check, that the Company's proposed distribution

1 charge for these customers is \$2.41 based on its  
2 original proposal?

3 A. Yes.

4 Q. Would you be willing -- I assume you've  
5 noted here that Mr. Luth now proposes that the  
6 charge go to \$5.85; is that correct?

7 A. Yes.

8 Q. And what is the percentage increase  
9 associated with that?

10 A. From a \$1.09 to \$5.85?

11 Q. Yes.

12 A. I would say about a 450 percent.

13 Q. And the Company's proposed increase for  
14 these folks would you accept, subject to check, it  
15 was 121 percent?

16 A. Yes.

17 Q. I'd like to you refer you to Lines 115  
18 through 118 of Mr. Luth's direct testimony as  
19 adopted by you.

20 As I understand it, what Mr. Luth was  
21 suggesting there, and since you've adopted it, what  
22 you are suggesting is that based on the surrebuttal

1 cost of service the proposals that was made in his  
2 direct testimony was based on the -- strike that.

3           The assumption that ComEd significantly  
4 demonstrated that certain customers were  
5 significantly under recovering cost and other  
6 customers were over referring cost was based upon  
7 that surrebuttal cost of service study; is that  
8 correct?

9       **A.**    Yes.

10       **Q.**    Now, do you know based on your experience  
11 in litigation before the Commission, whether or not  
12 parties have an opportunity to respond in testimony  
13 to surrebuttal testimony?

14       **A.**    Not in testimony, no.

15       **Q.**    Okay. So would you agree that in this  
16 particular instance no party had the opportunity to  
17 reply through formal testimony to the Company's  
18 surrebuttal cost of service study?

19       **A.**    That's correct.

20       **Q.**    And do you know why the Company bothered to  
21 file another study in surrebuttal?

22       **A.**    Not having been the rate design witness in

1   that case, I don't know specifically why.

2       **Q.**   All right.  Do you know whether or not,  
3   based on your review of the prior order or any  
4   other material, whether they did that because  
5   people had identified problems with the original  
6   study?

7       **A.**   I don't remember.

8       **Q.**   Okay.  Would you agree, subject to check,  
9   that the Commission did not use the Company's cost  
10   of service study, the surrebuttal cost of service  
11   study or the original cost of service study to set  
12   rates for the extra large load and high voltage  
13   load customers above 10 megawatts in the last case?

14      **A.**   That's my understanding.

15      **Q.**   Now, would you agree that your preferred  
16   rate moderation plan is more comprehensive than the  
17   rate moderation proposal contained in Mr. Luth's  
18   original direct testimony?

19      **A.**   Yes.

20      **Q.**   Now, in response to discovery from IIEC,  
21   did you indicate that you did not believe that the  
22   overall percentage increase in distribution line

1 and high voltage distribution substation costs  
2 should be the same increases in those costs  
3 allocated to all customer classes unless the  
4 allocation of those costs results in some overall  
5 percentage increase to each customer class?

6       **A.**     I'm sorry. Could you give me a --

7       **Q.**     It's your response to Data Request 1-3.

8       **A.**     1-3?

9       **Q.**     Yeah.

10       **A.**     Okay. I'm sorry. I lost your question  
11 again.

12       **Q.**     All right. Did you indicate that you did  
13 not believe that the overall percentage increase in  
14 distribution line and high voltage distribution  
15 substation costs should be the same increases in  
16 those costs allocated to all customer classes  
17 unless the allocation of those costs results in the  
18 same overall percentage increase to each customer  
19 class?

20       **A.**     Yes.

21       **Q.**     And by this did you mean to suggest that  
22 the overall percentage increase should be the same

1 to each customer class even if elements in the cost  
2 of service study and the cost of service study  
3 itself suggest different class revenues?

4 **A.** That's our preferred approach.

5 **Q.** And that would be consistent with your  
6 statement at Page 18, Lines 414 to 415 of your  
7 rebuttal testimony where you say that bill impacts  
8 have been and will continue to be an overriding  
9 concern for ComEd ratepayers?

10 **A.** Yes.

11 **Q.** Did you mean to imply that the rate design  
12 approach that you recommend should somehow drive  
13 the method used in the cost of service study?

14 **A.** My recommendation is a rate design should  
15 be developed independently of the cost of service  
16 study.

17 **Q.** So the answer is no, you didn't mean to  
18 imply that? It should be any other way?

19 **A.** I'm sorry. I just want to understand your  
20 question again.

21 **Q.** Let me read the question again. I think  
22 you would answer yes, and then with your

1 explanation. But let's make sure.

2 Did you mean to imply that the rate  
3 design approach that you recommend should somehow  
4 drive the method used in the cost of service study?

5 A. I'm not -- when you say the method used in  
6 the cost of service study, I just have -- I would  
7 have to say no to that question because I think the  
8 rate design approach should be adopted  
9 independently and shouldn't be used for any purpose  
10 with respect to the cost of service study.

11 Q. Okay.

12 MR. ROBERTSON: May I approach the witness?

13 (Whereupon, IIEC Cross-Exhibit  
14 Nos. 2-3 were marked for  
15 identification.)

16 BY MR. ROBERTSON:

17 Q. I show you what the court reporter has  
18 marked as IIEC Cross-Exhibits 2 and 3. And these  
19 are your data responses to IIEC Data Requests 1-4.  
20 It's IIEC Cross-Exhibit 2. And IIEC -- your  
21 response to IIEC Data Request 1-5, which is  
22 Cross-Exhibit 3.

1                   Do you see those?

2       **A.**     Yes.

3       **Q.**     And those were prepared by you?

4       **A.**     Yes.

5       **Q.**     And they accurately reflect your answers to  
6 those questions?

7       **A.**     Yes.

8       **Q.**     Now, did you indicate -- let me ask you  
9 this way: All else equal, do you believe that a  
10 properly designed cost of service study should  
11 account for the voltage level of distribution plant  
12 in the allocation of costs?

13       **A.**     Yes, if they can be accurately identified.

14       **Q.**     And, to your knowledge, do other Illinois  
15 utility delivery service costs -- do other Illinois  
16 delivery service utilities perform cost of service  
17 studies that account for the voltage level of  
18 distribution plant in the allocation of costs?

19       **A.**     I understand that the Ameren Illinois  
20 utilities do.

21       **Q.**     All right. And is it your understanding  
22 that they presented a cost of service study in



1 their most recent filing as part of that 285 filing  
2 that recognized that difference?

3 A. Yes.

4 Q. Now, is it also correct that you have  
5 indicated that your reference -- or Mr. Luth's  
6 reference to the cost of service study in Docket  
7 05-0597 in the direct testimony, Staff Exhibit 6.0,  
8 was only to illustrate past recovery issues for  
9 large customers and was not intended to opine on  
10 the study itself?

11 A. Do you have a...?

12 Q. I think it's 1-8.

13 A. I think the answer is yes.

14 Q. Now, I take it you have not reviewed the  
15 surrebuttal cost of service study in Docket 05-0597  
16 in detail?

17 A. No.

18 Q. No, you have not?

19 A. No, I have not.

20 Q. Did you participate in Docket 01-0423, the  
21 second ComEd delivery service rate case?

22 A. I think so. There are so many of them, I

1   lose count.   But...   Yes.

2       **Q.**   Is that because you participate in almost

3   all of them, Mr. Luth (sic).

4               I'll withdraw the question.

5               Would you agree that in Docket 01-0423

6   the Commission approved an across the board rate

7   increase for all nonresidential classes?

8       **A.**   I don't remember.

9       **Q.**   Would you accept, subject to check, that

10   they did?

11       **A.**   Yes.

12       **Q.**   Would you agree that if that is, in fact,

13   the case, than the Commission did not use the

14   Company's cost of service study in that docket for

15   the allocation of revenues?

16       **A.**   You said for a nonresidential or for --

17       **Q.**   For the nonresidential customer classes.

18       **A.**   It would meet it for the nonresidential

19   classes if that was the case.

20       **Q.**   Okay.

21       **A.**   So I'd limit the answer to that.

22       **Q.**   That was my question.

1                   And they wouldn't have used it for the  
2 design of rates for those classes either, would  
3 they, under that circumstance?

4       **A.**     No.

5       **Q.**     Now, were you involved in ComEd Docket  
6 99-0117, the first Commonwealth Edison delivery  
7 service case?

8       **A.**     Yes.

9       **Q.**     And would you agree that since the  
10 resolution of that docket, the rate structure for  
11 Commonwealth Edison has changed?

12       **A.**     If you can explain that question. When you  
13 say the rate structure is changed, I'm assuming --  
14 it's a broad --

15       **Q.**     We no longer have things such as Rate 6-L?

16       **A.**     That's correct.

17       **Q.**     All right. And 6-L was the bundled service  
18 rate for very large customers in the ComEd service  
19 territory?

20       **A.**     Right.

21       **Q.**     All right. And would you also agree that  
22 the structure of Commonwealth Edison itself has

1 changed?

2 A. Yes.

3 Q. And Commonwealth Edison is a wires only  
4 company now, not a fully integrated utility, only  
5 generation; is that correct?

6 A. That's correct.

7 Q. And the cost of service study that  
8 Commonwealth Edison presented in 1999 in the  
9 1999-case, is it to the best of your knowledge  
10 structured essentially the same as the one they've  
11 presented in this case?

12 A. I'm sorry. I don't remember.

13 Q. Now, I'd like to refer you to Page 19 of  
14 your rebuttal testimony, Lines 434 through 436.

15 A. Okay.

16 Q. And it might shorten this line of  
17 questioning up. You discuss the price increase to  
18 residential customers in your bill impact analysis  
19 there, do you not?

20 A. Yes.

21 Q. And you indicate that bills would increase  
22 by approximately 2.5 percent; is that correct?

1       **A.**     Yes.

2       **Q.**     And that's based on the average bill  
3     increase for residential customers; is that  
4     correct?

5       **A.**     That's correct.

6       **Q.**     Would you agree -- do you have any idea or  
7     feel for how much power costs are projected to  
8     increase for large customers as compared to a year  
9     ago?

10      **A.**     No, I don't.

11      **Q.**     Would you agree that power costs for large  
12     industrial customers are driven to a large degree  
13     by wholesale power costs?

14      **A.**     I would say that's a factor.

15      **Q.**     Do you have any sense for how the forward  
16     wholesale power costs have increased in the last  
17     year?

18      **A.**     My general sense is that it has been  
19     increasing.

20      **Q.**     Okay. Would you expect that the increase  
21     would be greater than 2 and a half percent?

22      **A.**     In like the spot price, the average or...?

1       Q.     Well...

2       JUDGE HILLIARD:   Do you have any reason to

3   disagree with that?

4       THE WITNESS:   No.

5   BY MR. ROBERTSON:

6       Q.     Are you familiar with the publication,

7   Platts Megawatt Daily?

8       A.     Platts what?

9       Q.     Megawatt Daily?

10      A.     I think I've seen it.

11      Q.     Are you aware that they publish wholesale

12   electric forward contracts in that publication?

13      A.     I wasn't specifically aware of that, no.

14      Q.     Okay.

15      JUDGE HILLIARD:   You know, he said he doesn't

16   know anything about this.   He's also said he agrees

17   that the wholesale price has probably increased 2

18   and a half percent or more.

19   BY MR. ROBERTSON:

20      Q.     Well, let me ask a concluding question and

21   maybe we can get rid of all this in the middle.

22                Would you be willing to accept, subject

1 to check, that according to that publication on  
2 Thursday April 3, 2008, that prices for the  
3 Northern Illinois Hub or NI Hub were estimated to  
4 be on April 2nd, \$72.00 per megawatt hour?

5 **A.** Yes.

6 **Q.** And would you also agree that in that  
7 same -- subject to check, that in that same  
8 publication, April 3, 2007, forward prices for the  
9 NI -- Northern Illinois Hub, were shown to be  
10 \$63.95 per megawatt hour?

11 **A.** Subject to check, yes.

12

13

14 (Whereupon, there was a  
15 change of reporters.)

16

17

18

19

20

21

22

1       Q.     Would you agree, subject to check, that \$72  
2     is 12.5 percent greater than \$63.95?

3       A.     Yes.

4       MR. ROBERTSON: Nothing further. Thank you,  
5     Mr. Lazare.

6       JUDGE HILLIARD: Does the Commercial Group have  
7     questions for this witness or do you want to bring  
8     up your own witness, now?

9       MR. JENKINS: Bring up our own.

10      MS. POLEK-O'BRIEN: Your Honor, while we're  
11     changing witnesses, perhaps we can take care of the  
12     response to the Judge's data request yesterday. We  
13     do have a data request that we believe is  
14     responsive. You had asked for it to be in the  
15     record and if you still want it to be, we would  
16     mark it as Com Ed Exhibit 47.

17             This, we believe, explains the process  
18     by which this is going to be calculated. As  
19     Mr. Crumrine mentioned several times, the witnesses  
20     best geared to talk about this are Mrs. Houtsma and  
21     Frank. Really Ms. Houtsma can address it  
22     thoroughly. So if the Judges would like, we would



1 be very happy to bring her back in on Monday to  
2 address any questions you may have.

3 JUDGE HILLIARD: Maybe we should look at it and  
4 if we have a question, we'll let you know.

5 MR. ROBERTSON: We would move the admission of  
6 IIC Cross Exhibits 2 and 3.

7 MR. FOSCO: No objection from Staff.

8 JUDGE HILLIARD: IIC Cross Exhibits 2 and 3 will  
9 be admitted in the the record.

10 (Whereupon, Com Ed  
11 Exhibit No. 47 was  
12 marked for identification  
13 as of this date.)

14 (Whereupon, IIC Cross  
15 Exhibits Nos. 2 and 3 was  
16 admitted into evidence as  
17 of this date.)

18 (Witness sworn.)

19

20

21

22

1                   RICHARD BAUDINO,  
2   called as a witness herein, having been first duly  
3   sworn, was examined and testified as follows:

4                   DIRECT EXAMINATION

5                   BY

6                   MR. JENKINS:

7       **Q.**    Mr. Baudino, please state your name for the  
8   record.

9       **A.**    My name is Richard Baudino.

10      **Q.**    By whom are you employed?

11      **A.**    J. Kennedy and Associates Incorporated.

12      **Q.**    Did you prefile or cause to be prefiled  
13   rebuttal testimony in this docket on behalf of the  
14   Commercial Group that was marked as CG Exhibit 2.0?

15      **A.**    Yes, I did.

16      **Q.**    Did you also include a resume of your  
17   experience that was marked as CG Exhibit 2.1?

18      **A.**    Yes.

19      **Q.**    Were these prepared by you or under your  
20   direct supervision?

21      **A.**    They were prepared by me.

22      **Q.**    Do you have any corrections to them?

1       **A.**     I do not.

2       **Q.**     If I were to ask you the same questions  
3 today that are listed in that prefiled testimony,  
4 would your answers be the same?

5       **A.**     Yes.

6       MR. JENKINS: We would move the exhibits CG  
7 Exhibits 2.0 and 2.1 into the record.

8       JUDGE HILLIARD: Objections? No objection, the  
9 exhibits will be admitted into the record.

10                               (Whereupon, CG  
11                               Exhibits Nos. 2.0 and 2.1 were  
12                               admitted into evidence as  
13                               of this date having been  
14                               previously filed on e-docket.)

15       MR. JENKINS: The witness is available for cross.

16                               CROSS EXAMINATION

17                               BY

18                               MR. BALOUGH:

19       **Q.**     Good afternoon, Mr. Baudino, my name is  
20 Richard Balough and I represent the CTA in this  
21 case.

22       **A.**     Good afternoon.

1       **Q.**     In looking at your testimony, did you  
2     prepare a cost of service study on your own in this  
3     case?

4       **A.**     No, I did no. I reviewed the cost of  
5     service study filed by the Company and the cost of  
6     service studies filed by Mr. Stowe.

7       **Q.**     And am I correct that you, as part of your  
8     testimony, just accepted Mr. Crumrine's statement  
9     that there is a subsidy of \$44 million?

10      **A.**     Yes, based on the Company's cost of service  
11     study, that's correct.

12      **Q.**     And you didn't do anything to independently  
13     verify that subsidy, did you?

14      **A.**     I independently verified it by looking at  
15     the results of the cost of service study and that's  
16     how I verified it.

17      **Q.**     But you didn't do any analysis on your own  
18     to determine whether or not there is in fact a  
19     \$44 million subsidy?

20      **A.**     The Company's cost of service study was  
21     performed relatively reasonably, except for the one  
22     exception that I mentioned in my testimony about

1 the primary and secondary facilities.

2 Q. And do I read your testimony correctly,  
3 that you agree with IIEC Witness David Stowe that  
4 there are problems with the Com Ed cost of service  
5 study?

6 A. The primary one would be the failure to  
7 separate between primary and secondary voltage  
8 facilities and separate out customers'  
9 responsibility for that.

10 Q. And in doing so, do you agree -- I assume,  
11 then, you generally agree with his analysis  
12 concerning primary and secondary systems in the Com  
13 Ed system; is that correct?

14 A. Well, I think his analysis shows the  
15 relative relationship, in terms of what would  
16 happen if you tried to separate out primary and  
17 secondary facilities and then assign those costs or  
18 allocate those costs to customers accordingly.

19 He had to make some estimates because he  
20 did not have the full amount of data. So I think  
21 even Mr. -- I don't want to put words in his mouth,  
22 but it's not an exact study. But I think it shows

1 the general relationship correctly.

2 Q. Would you agree with me that certainly as  
3 it comes to cost of service studies, that just as  
4 you indicated in this case, different parties can  
5 disagree as to what an appropriate cost of service  
6 study is?

7 A. They can and often do.

8 Q. And to the extent that there are  
9 differences of opinion, that would affect whether  
10 or not there is, in fact, a subsidy flowing to one  
11 class or another class?

12 A. Yes, in the eyes of the different parties,  
13 correct.

14 Q. Do you have Mr. Stowe's testimony, IIEC  
15 Exhibit 6.0?

16 A. I believe I have his direct testimony with  
17 me.

18 Q. That is his direct, yes.

19 A. Okay.

20 Q. And if you could, could you refer to Page  
21 21 of that exhibit.

22 A. I'm sorry, which page did you want me to

1 refer to?

2 Q. 21.

3 A. I have that.

4 Q. And you see there is a Table 5 on that

5 page; is that correct?

6 A. Yes.

7 Q. And would you agree that that was

8 Mr. Stowe's attempt to differentiate between

9 primary and secondary on the Com Ed system?

10 A. Yes, it is.

11 Q. Do you have any reason to disagree with his

12 analysis?

13 A. I sort of -- I mean, I looked at it as his

14 attempt to estimate the percentage of class load

15 between primary and secondary. I haven't verified

16 these calculations myself.

17 Q. And you also have no reason to disagree

18 with those numbers; is that correct?

19 A. I think -- I think what they show generally

20 doesn't surprise me.

21 Q. And am I correct that based upon

22 Mr. Stowe's analysis, the railroad class does not

1 use any of the Com Ed secondary system; is that  
2 correct?

3 A. That's correct. That's what this shows.

4 Q. And for a moment, assuming that that is  
5 correct, would the fact that Com Ed has failed to  
6 differentiate the difference between primary and  
7 secondary voltage, would have an affect on the cost  
8 of service allocation to the railroad class?

9 A. It would. It would have an affect, yes.

10 Q. And the affect would be, assuming for a  
11 moment that this is correct, that costs have been  
12 over allocated to the railroad class, would that be  
13 correct?

14 A. Yes.

15 Q. And if you could turn to your testimony.

16 A. I have that.

17 Q. On Page 6 you have a table as well; is that  
18 correct?

19 A. Yes.

20 Q. And I think I'm reading your testimony  
21 correctly, is that on this table, it's anything  
22 less than 1.0 indicates that that customer class is



1 paying less than what the cost of service study  
2 indicates they should pay as a general proposition?

3     **A.**     It's under earning the system rate of  
4 return.

5     **Q.**     And anything that would be over 1.0 would  
6 indicate that they are -- their revenues are in  
7 excess of what they should pay under the cost of  
8 service; is that correct?

9     **A.**     Yes.

10    **Q.**     And, for example, if looking at your table,  
11 if we go to the railroad class and Stowe COSS MDS  
12 study, that indicates 1.2 for the railroad class,  
13 correct?

14    **A.**     That's correct.

15    **Q.**     That's based on the minimum distribution  
16 study and I believe that also includes the effect  
17 of the primary secondary voltage, I think.

18    **Q.**     And based upon -- if that were to be the  
19 correct cost of service study, and I understand  
20 people can disagree, that would indicate, for that  
21 purpose, that the railroad class, as the term has  
22 been used, is subsidizing other classes; is that

1 correct?

2       **A.**     Well, if you use that study, that is what  
3 it shows. If we just talk about the -- earlier we  
4 were talking about the primary and secondary  
5 voltage affect, and if you limit it to that, what  
6 he shows is the railroad class still substantially  
7 under the system rate of return.

8       **Q.**     In preparation of your testimony, did you  
9 review the orders in any of the earlier Com Ed  
10 dockets?

11       **A.**     I believe I reviewed the rate -- the cost  
12 allocation and rate design section in the prior  
13 order for Com Ed.

14       **Q.**     Let me ask you this, do you agree that the  
15 Illinois Commerce Commission, in setting rates,  
16 should encourage the efficient use of energy and  
17 conservation of resources?

18       **A.**     Yes. I believe the best way to do that is  
19 by setting cost based rates.

20       **Q.**     And do you agree that the Commission must  
21 consider the potential adverse impact of utility  
22 rates on entities that provide public

1 transportation?

2       **A.**     I wouldn't limit it to entities that  
3 provide public transportation. I would say that is  
4 a consideration for any class.

5       **Q.**     And do you agree that the Commission must  
6 consider, in setting rates, that the rates for mass  
7 transit will not unduly burden the millions of  
8 customers who depend on public transportation?

9       **A.**     I really haven't look at that particular  
10 social issue.

11       MR. BALOUGH: I have no other questions.

12                   CROSS EXAMINATION

13                   BY

14                   MR. GOWER:

15       **Q.**     Mr. Baudino, I'm Ed Gower, I represent  
16 Metra in this matter.

17       **A.**     Good afternoon.

18       **Q.**     I just have a couple quick questions for  
19 you. You mentioned the minimum distribution system  
20 study that Mr. Stowe had reported on, correct?

21       **A.**     Yes.

22       **Q.**     And if I understood the testimony that you

1 filed in this case, that's an analysis that you  
2 support and believe is appropriate for use in this  
3 matter, is it not?

4       **A.** I do very much concur with the use of the  
5 minimum sized distribution study and it should be  
6 applied in both gas and electric cases.

7       **Q.** This is an electric case, we'll take the  
8 gas case another time.

9       **A.** Sure. And this Commission has not adopted  
10 the MDS approach in past cases, but I do support  
11 it, wholeheartedly.

12       **Q.** And you think that's a proper line of  
13 analysis, do you not?

14       **A.** I do.

15       **Q.** And under that line of analysis, the  
16 numbers that you report in your testimony, indicate  
17 that, in fact, the railroad class is paying about  
18 25 percent more than its cost of service; is that  
19 correct?

20       **A.** Under that study, that would be correct.  
21 About 25 percent above the system rate of return.

22       **Q.** And having knowledge now that the railroad,

1 in your view, is paying 25 percent more, are you  
2 still -- is your testimony still that the railroad  
3 class should not receive any reduction in the  
4 initial proposed rates submitted by Commonwealth  
5 Edison Company?

6       **A.** Well, I believe that if the Commission  
7 wants to deviate from its past practice of setting  
8 rates based on costs, they can do that. I believe  
9 the Company submitted a mitigation proposal. My  
10 only concern about that is, and the thing I would  
11 very much urge the Commission to do, is that any  
12 mitigation, like the Company has proposed in its  
13 rebuttal, be spread to all the rate classes and not  
14 merely confined to the other nonresidential  
15 classes.

16       **Q.** Are you aware of what impact the \$500,000  
17 reduction in Metra's total payments -- strike that.

18               Is your testimony in this case that the  
19 cost to Metra, the reduced cost to Metra of the  
20 alternative proposal made by Commonwealth Edison is  
21 \$500,000. Are you aware that if you spread that  
22 over all the other nonresidential rate classes, the

1 increase in the cost of their rates would be .0006  
2 increase?

3       **A.**    I'd be willing to accept that subject to  
4 check. And further add that if you were to spread  
5 that over all rate classes it would be even lower  
6 than that, it would be de minimis.

7       **Q.**    And now that you are aware of that, are you  
8 still opposed to any reduction in the rates paid by  
9 the railroad class?

10       **A.**    I think subject to the concerns I had, I  
11 don't have a problem with the Company's proposed  
12 mitigation proposal, as long as those subsidies are  
13 in some way borne equitably by all the remaining  
14 classes, not just residential.

15       **Q.**    But they are not subsidies at all if they  
16 adopt your line of analysis; isn't that correct?

17       **A.**    If they were to adopt -- are you talking  
18 about the minimum size system study.

19       **Q.**    I'm talking about what you think is the  
20 best analysis for determining the Commonwealth  
21 Edison's proposed rate of return as compared to  
22 cost of service to the railroad class.

1       **A.**     Well, I support the Company's cost of  
2     service study. And I'm willing to even agree to  
3     the mitigation proposal, as long as that is spread  
4     to all of the other remaining classes.

5       **Q.**     Maybe I misread your testimony. I thought  
6     that you said that the Company's cost of service  
7     study needed to be refined and that there were two  
8     principal refinements that should be made to it.  
9     One of those was to distinguish between primary and  
10    secondary service and the second one was to adopt  
11    the minimum distribution system approach. Did I  
12    misread your testimony?

13       **A.**     No, that's correct. In my testimony I  
14    agreed to distinguish between primary and secondary  
15    facilities. And as a result, those customers taking  
16    only a primary were allocated too much cost. Now,  
17    if you take -- I believe if you take a mitigation  
18    approach like the Company is proposing, you sort of  
19    end up correcting for that in a way, indirectly.

20               As far as the minimum distribution study  
21    goes, I would love for the Commission to adopt it,  
22    I wish they would. However, past precedent would

1 indicate that the Commission has rejected that.

2 But I do support it.

3 Q. And under what you think is the best line  
4 of analysis, unless I'm mistaken, you believe that  
5 the railroad class is providing a subsidy to other  
6 classes; is that correct?

7 A. Well, under the minimum distribution system  
8 study that's what it shows.

9 MR. GOWER: I no further questions, thank you  
10 very much.

11 JUDGE HILLIARD: Are there other questioners for  
12 this witness?

13 MR. SKEY: Yes, your Honor.

14 CROSS EXAMINATION

15 BY

16 MR. SKEY:

17 Q. Good afternoon, my name is Christopher  
18 Skey, I'm here on behalf of the REACT Coalition.

19 A. Good afternoon.

20 Q. Sir, having read your testimony, it's my  
21 understanding that you would agree that in this  
22 case the sole basis for Com Ed's rate proposal is



1 Com Ed's imbedded cost of service study; is that  
2 correct?

3 MR. JENKINS: Excuse me, could you pull the mike  
4 closer.

5 THE WITNESS: Yes, it is.

6 BY MR. SKEY:

7 Q. And, sir, you would support setting rates  
8 in a manner that reflects an accurate assessment of  
9 costs; isn't that correct?

10 A. Yes.

11 Q. And that was your prior testimony today as  
12 well, wasn't it?

13 A. Yes.

14 Q. And you support setting rates in a manner  
15 that avoids subsidies between customer classes;  
16 isn't that correct?

17 A. Yes.

18 Q. Now, you would agree that in order to know  
19 if rates result in subsidies you must first have an  
20 accurate cost study in the first place, right?

21 A. That would help, yes. In fact that's  
22 necessary.

1       **Q.**     So before you can decide whether there is  
2     or is not a subsidy relating to any rate, there  
3     must be a clear understanding of what costs are  
4     appropriately allocated to each customer class; is  
5     that a fair statement?

6       **A.**     That is a fair statement.

7       **Q.**     And again, you would agree in this case  
8     that the ECOSS, Com Ed's ECOSS, is the sole basis  
9     for the rate proposal before the Commission?

10      **A.**     I believe that's correct, from the  
11     Company's point of view, yes.

12      **Q.**     And you would agree that in this case there  
13     is conflicting testimony about the validity of the  
14     cost study at issue; isn't that a fair statement?

15      **A.**     Sure, that's correct.

16      **Q.**     And I understand your testimony today to be  
17     that you did not independently perform a cost of  
18     service study, did you?

19      **A.**     I did not.

20      **Q.**     So to the extent that you were relying on  
21     Com Ed's cost of service study or reviewing it, you  
22     relied, at least by implication, on all the

1 assumptions that Com Ed made in reviewing that  
2 study?

3 A. I did.

4 Q. And you would agree that to the extent that  
5 the cost of service study is incorrect or has any  
6 flaws, that it would not be a factually reliable  
7 basis upon which to determine that there is a  
8 subsidy or is not a subsidy between customer  
9 classes; isn't that a fair statement?

10 A. Under your hypothetical, sure.

11 Q. Now, again, it's your position that rates  
12 should reflect costs, right?

13 A. Yes.

14 Q. And in your testimony, you refer to, I  
15 believe, an imbedded cost paradigm that  
16 Mr. Crumrine testified about, is that accurate?

17 A. Could you refer me to that, please?

18 Q. I believe it is your rebuttal testimony at  
19 Line 53. Let me be accurate, you were quoting  
20 Mr. Crumrine, who referred to current imbedded cost  
21 paradigm.

22 A. Yes.

1       **Q.**     You would agree, wouldn't you, that the  
2 imbedded cost paradigm is not the only approach to  
3 determining costs, right?

4       **A.**     It's not the only one, but it is the most  
5 prevalent. And also marginal cost is one that is  
6 used. And it's my understanding this Commission  
7 has used that in past..

8       **Q.**     So there are other approaches besides the  
9 ECOS?

10      **A.**     Yes, but embedded cost of service is by far  
11 the most prevalent.

12      **Q.**     Now, another option you've identified is  
13 the marginal cost approach, but there is another  
14 option isn't there? You could also perform an  
15 individualized study of cost of service for  
16 individual customers, at least theoretically,  
17 correct?

18      **A.**     Theoretically, yes, you could. And I think  
19 the reason do an imbedded cost of service study  
20 with allocation factors is because it becomes  
21 extremely difficult, if not impossible, to have a  
22 true cost of service rate for every person or every

1 locale in the company service territory.

2 Q. And in this case, obviously, with, I  
3 believe the testimony is 3.8 million customers, it  
4 would be impractical and totally impossible to do  
5 that?

6 A. Yes, I would agree. Certainly impractical.

7 Q. But you could do an individualized study  
8 for some group of customers; isn't that correct?

9 A. That is possible.

10 Q. And you're aware that, or are you aware  
11 that, REACT Witness Mr. Bodmer has proposed that  
12 the Company perform an individualized study for the  
13 customers in the extra large customer class, are  
14 you aware of that?

15 A. I am aware of that and I'm aware of the  
16 Company's opposition to that.

17 Q. And you are aware that there is evidence in  
18 the record that Com Ed could do such an  
19 individualized study for its largest customers if  
20 it were required to; is that correct?

21 A. What evidence are you referring to?

22

1 (Whereupon, REACT Cross  
2 Exhibit No. 19 was  
3 marked for identification  
4 as of this date.)

5 BY MR. SKEY:

6 Q. Sir, I've handed you what we'll mark for  
7 the record at REACT Cross Exhibit 19. And that  
8 document is Commonwealth Edison Company response to  
9 REACT Data Request 4.01 through 4.32. And  
10 specifically this is the Company's response to  
11 request No. 4.28. Do you see that, sir, at the top  
12 of the page?

13 A. I do, I do see that.

14 Q. Sir, do you see in the request portion of  
15 the document, the first paragraph, the question  
16 refers to some testimony and says, do Mr. Alongi  
17 and Ms. Jones believe that Com Ed is technically  
18 capable of performing the task of analyzing the  
19 actual facilities used by the over 10-megawatt  
20 customers for purposes of assigning costs and  
21 providing delivery services as proposed by  
22 Mr. Bodmer. Did I read that accurately, sir?

1       **A.**     Yes, you did.

2       **Q.**     And then it says, please explain in detail  
3     why or why not.   And sir, in the response, you see  
4     it says --

5       MR. JENKINS: Your Honor, I would object to the  
6     extent that the question was whether the witness  
7     knows that there is evidence in the record about  
8     this.   I'm not sure this witness knows whether this  
9     is in the record.   It appears to be a data request,  
10    it looks like it would be better directed to the  
11    company.

12       JUDGE HILLIARD: Do you want to qualify your  
13    question, counsel.

14    BY MR. SKEY:

15       **Q.**     Sir, were you on the service list in this  
16    case?   I'm sure your counsel was, but I don't know  
17    if you were.   Some witnesses were and some were  
18    not.

19       **A.**     I don't know if I was, I don't think I was.

20       **Q.**     Do you know if your counsel was on the  
21    service list?

22       MR. JENKINS: I was.

1 BY MR. SKEY:

2 Q. And are you aware that in this case data  
3 requests were served generally -- and responses to  
4 data requests were served generally upon all  
5 counsel when they were sent out by the Company.

6 MR. JENKINS: Again, he testified he wasn't on  
7 the service list.

8 MR. SKEY: I'm asking if he knows if that  
9 occurred or not.

10 THE WITNESS: I don't know.

11 BY MR. SKEY:

12 Q. Will you accept the representation that all  
13 data requests were sent to all counsel in the case?

14 A. Your representation?

15 Q. Yes.

16 A. Okay, for purposes of this cross I'll  
17 accept your representation.

18 Q. Have you ever seen this document before,  
19 sir?

20 A. No.

21 Q. So this was not provided to you prior to  
22 today?



1       **A.**     I have not seen it.

2       **Q.**     Sir, could you read the first sentence to  
3 the response?

4       MR. JENKINS: Again, I object.

5       JUDGE HILLIARD: Well, he can read it over. He  
6 doesn't have to read it in the record, just read it  
7 over.

8 BY MR. SKEY:

9       **Q.**     Let me know when you've read that, sir.

10      **A.**     I've read it.

11      **Q.**     Does it indicate that Com Ed believes it's  
12 technically possible to analyze the cost of  
13 facilities used to supply over 10-megawatt  
14 customers and railroad customers?

15      **A.**     That's what the first part of the sentence  
16 says.

17      **Q.**     And then there is a qualification  
18 indicating that it would require considerable  
19 resources and appropriate skills to complete the  
20 analysis. Isn't that a fair reading?

21      **A.**     Yes.

22      **Q.**     But it does indicate that it is technically

1 possible, doesn't it?

2       **A.**     It says Com Ed believes that while it  
3     is technically possible to analyze the costs of  
4     facilities used to supply the over 10-megawatt  
5     customers and railroad customers, considerable  
6     resources with the appropriate skills would be  
7     required to complete such an analysis. And it goes  
8     on to describe that. In the second part of the  
9     response it says, Com Ed is not staffed to conduct  
10    such a comprehensive cost analysis at this level of  
11    detail.

12       **Q.**     Okay. Assuming Com Ed were staffed or were  
13    ordered by the Commission to become staffed to  
14    perform such a study, the answer here indicates  
15    that it is technically possible, doesn't it?

16       JUDGE HILLIARD: You've said that three times  
17    now, ask another question.

18    BY MR. SKEY:

19       **Q.**     Sir, I'm handing you an exhibit that is  
20    marked in the upper left-hand corner as REACT Cross  
21    Exhibit 16? Do you see that?

22       **A.**     Yes, I do.

1 JUDGE HILLIARD: Was this marked?

2 MR. SKEY: I believe it was. I believe it was

3 admitted yesterday afternoon during Mr. Crumrine's

4 cross examination.

5 JUDGE HILLIARD: I crossed it out. I have that

6 it's not admitted. But you can ask a question of

7 it.

8 MR. SKEY: Just for clarification of the record,

9 I believe we admitted.

10 JUDGE HILLIARD: 10 through 15 and 18 and that's

11 all.

12 BY MR. SKEY:

13 Q. Sir, have you ever seen this document

14 before?

15 A. No.

16 Q. The request reads, please provide the cost

17 of equipment associated with distribution

18 facilities that Com Ed has installed to serve the

19 following customers, and it lists several customers

20 including O'Hare Airport, Midway, Argonne National

21 Laboratory; is that accurate?

22 A. Yes.

1       **Q.**     And it then says, please provide the same  
2     information for all City facilities with demands  
3     greater than 10 megawatts?

4       **A.**     I see that, yes.

5       MR. SKEY: Your Honor, Mr. Townsend has  
6     enlightened me on something, I apologize for the  
7     confusion. I believe this exhibit was Exhibit 2.5  
8     to Mr. Bodmer's testimony, his direct testimony,  
9     which was admitted this morning. So I apologize  
10    for the confusion with respect to the designation,  
11    but I believe it is in evidence.

12    BY MR. SKEY:

13       **Q.**     So sir, this request that the Company  
14    provide cost of equipment associated with several  
15    facilities, including O'Hare, Midway and also for  
16    City facilities, that is City of Chicago  
17    facilities, with demands greater than 10 megawatts;  
18    is that accurate?

19       **A.**     Yes.

20       **Q.**     And then it says, if the cost of the  
21    facilities are burdensome to compile, please  
22    describe what would be required to compile the

1 costs?

2       **A.**     Yes.

3       JUDGE HILLIARD: This is somebody else's data  
4 response, he doesn't know anything about it, he  
5 hasn't seen it before. If you have a point to make  
6 here, do it by means other than reading each line  
7 of the exhibit in the record.

8 BY MR. SKEY:

9       **Q.**     Sir, having reviewed the document I handed  
10 you a few moments ago and then this document, you  
11 would agree, wouldn't you, that the company  
12 indicates that it's theoretically possible, at  
13 least, to perform an individualized cost of service  
14 study for the over 10-megawatt customer class?

15       JUDGE HILLIARD: I think you've already  
16 established that, he said --

17       MR. SKEY: I didn't know he admitted that. If he  
18 had, I'm finished.

19       JUDGE HILLIARD: Do you agree with that  
20 proposition, sir, or not?

21       THE WITNESS: I want to read the response.

22       JUDGE HILLIARD: Okay.

1 THE WITNESS: Well, the gist of the response is  
2 that the Company could do it with a couple months  
3 of time.

4 MR. SKEY: No further questions.

5 JUDGE HILLIARD: Anybody else have questions for  
6 this witness?

7 MR. BRUDER: I have a few, if I may.

8 CROSS EXAMINATION

9 BY

10 MR. BRUDER:

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. I'm Perry Bruder of the U.S. Department of  
14 Energy. What I have is very brief. I'm looking at  
15 Page 3 of your testimony, Line 47 and following.

16 A. I have that.

17 Q. You refer there to customers who are  
18 providing this large subsidy. That's the first  
19 time in the testimony you refer to any subsidy. Is  
20 the subsidy you're referring to there the one you  
21 describe at Page 3, Lines 57 through 59?

22 A. Yes.

1       **Q.**     You say at Page 3, Lines 57, 58, that the  
2     subsidy is provided to the three largest customer  
3     classes. Can you tell me which classes the three  
4     largest customer classes are, sir?

5       **A.**     The high voltage classes and the extra  
6     large load class. By largest I meant largest  
7     consumption or largest demand.

8       **Q.**     And the three classes you named were what  
9     again?

10      **A.**     I believe it was extra large load, high  
11     voltage -- and the two high voltage classes.

12      **Q.**     And I see you are referring to a document  
13     for that information. May I ask what document that  
14     is you are referencing?

15      **A.**     I was looking at my testimony, Table 1.

16      **Q.**     Okay. Now, let me be perfectly straight  
17     about this. I have heard questions in the prior  
18     cross examination that I think at least partly  
19     mirror what I have to say here, I thought about it,  
20     I think it's probably just easier to answer the  
21     question as I've written it than to try to parse it  
22     and try to determine whether you've answered it

1 partly or fully before. My question is simply, did  
2 you personally or anyone under your supervision,  
3 anyone working for the Commercial Group,  
4 independently evaluate this cost of service study  
5 that the Company filed in this proceeding?

6       **A.** Yes, I reviewed it myself. I looked at the  
7 cost of service study, I went through all the pages  
8 of it and the allocation factors and so forth. So  
9 I did independently review it. And I wanted to add  
10 one thing to sort of clarify my answer to a  
11 previous question. The three largest classes I was  
12 referring to there, the extra large, the two high  
13 voltage classes and railroad. That I referenced on  
14 Page 2 of 9, on Line 43 and 44. But I left out the  
15 railroad class in my prior response.

16       **Q.** Now, in what you say was your own analysis  
17 of this cost of service study, would you say that  
18 your analysis confirmed, or gave -- gave you to  
19 suppose that you found any evidence that indicates  
20 that the subsidy that you referred to actually  
21 exists?

22       **A.** Yes.



1       Q.     And what evidence was that, sir?

2       A.     It was the -- it was actually the results  
3     that fell out of the cost of service study the  
4     Company had filed with the corrections that it  
5     made. I believe there was a correction to the NCP  
6     for one of the high voltage classes that brought  
7     that class more into line with cost.

8       Q.     Did you just say that the evidence you  
9     found for the existence of the subsidy is the  
10    results of the 2005 study?

11      A.     No, the cost of service study the Company  
12    filed in this case.

13      MR. BRUDER: Nothing further, thank you.

14      JUDGE HILLIARD: Are there other questioners for  
15    this witness? Since there don't appear to be any,  
16    do you have any redirect?

17                   REDIRECT EXAMINATION

18                   BY

19                   MR. JENKINS:

20      Q.     Yes. Mr. Baudino, you were asked a number  
21    of questions about cost studies in this case and  
22    what they might indicate for classes. What do the

1 cost studies filed in this case demonstrate about  
2 whether medium through very large load classes are  
3 above or below cost of service?

4       **A.**     The cost of service studies filed in this  
5 case indicate that those three cases are all above  
6 their current cost of service and they should get  
7 increases less than the system average cost  
8 increase.

9       MR. JENKINS: No further questions.

10       JUDGE HILLIARD: Any recross?

11       MR. SKEY: Yes, your Honor.

12                       RECROSS EXAMINATION

13                       BY

14                       MR. SKEY:

15       **Q.**     Mr. Baudino, Chris Skey, again, on behalf  
16 of REACT. Your answer to the last question  
17 regarding the affect on the medium sized customers,  
18 that assumes that the cost of service study is  
19 accurate, does it not?

20       **A.**     Yes. And actually what it also shows, I  
21 think, what it maybe assumes, but doesn't state  
22 overtly, is that if you look at the attempt that

1 Mr. Stowe made to separate the primary and  
2 secondary facilities, that actually the relative  
3 rate of return for the large -- let me get this,  
4 the relative rate of return for the large load and  
5 very large load increases, substantially.

6 Q. But it was your testimony earlier that  
7 Mr. Stowe, in fact, identified an error with the  
8 the cost of service study, right or a problem?

9 A. Mr. Stowe? Well, he had -- he identified  
10 the lack of the primary and secondary  
11 differentiation and attempted to show, as best he  
12 could, with limited data he had, what that might  
13 look like if you separated those facilities.

14 Now, in response to counsel there was an  
15 error in the NCP -- I believe it was the NCP  
16 allocators for one of the high voltage classes  
17 which was corrected subsequently by the Company.

18 MR. SKEY: No further questions.

19 (Witness excused.)

20 JUDGE HILLIARD: Next witness, please.

21 MR. JENKINS: Commercial Group calls Mr. Vite.

22 (Witness sworn.)

1                   DAVID VITE,  
2   called as a witness herein, having been first duly  
3   sworn, was examined and testified as follows:

4                   DIRECT EXAMINATION

5                   BY

6                   MR. JENKINS:

7       **Q.**    Would you please state your name for the  
8   record?

9       **A.**    David Vite.

10      **Q.**    By whom are you employed?

11      **A.**    The Illinois Retail Merchants Association.

12      **Q.**    And what is that?

13      **A.**    That is a trade association representing  
14   merchants of all sizes and merchandise lines  
15   throughout the State of Illinois.

16      **Q.**    Did you prefile or cause to have prefiled  
17   rebuttal testimony on behalf of the Commercial  
18   Group, marked as CG Exhibit 1.0?

19      **A.**    Yes.

20      **Q.**    And did you also have prefiled a resume as  
21   CG 1.1?

22      **A.**    As simple as it was, yes.

1       Q.     Were they prepared by you or under your  
2 direct supervision?

3       A.     Yes.

4       Q.     Do you have any corrections?

5       A.     No.

6       Q.     If I were to ask you the same questions  
7 today as are listed in that testimony would your  
8 answers be the same?

9       A.     Yes.

10      MR. JENKINS: I would move CG Exhibits 1.0 and  
11 1.1 into the record.

12      JUDGE HILLIARD: Objections? Hearing no  
13 objections, they will be admitted.

14                       (Whereupon, CG  
15 Exhibits Nos. 1.0 and 1.1 were  
16 admitted into evidence as  
17 of this date having been  
18 previously filed on e-docket.)

19      MR. JENKINS: The witness is available for cross.

20

21

22

1 CROSS EXAMINATION

2 BY

3 MR. BALOUGH:

4 Q. Good afternoon, Mr. Vite, my name is  
5 Richard Balough and I represent the CTA. On Page 4  
6 of your testimony you state that under the current  
7 imbedded cost paradigm, the imbedded cost approach  
8 is the only objective benchmark to fairly allocate  
9 cost among customers, and you are quoting  
10 Mr. Crumrine, and then you say you agree; is that  
11 correct?

12 A. Yes, sir.

13 Q. Can you tell me what other types of cost of  
14 service studies there are?

15 A. Marginal cost studies, there are a variety  
16 of different types of cost studies. This one  
17 certainly is -- this particular type of study is  
18 designed to insure that people pay what they cost  
19 the system and that's a basic principle of the  
20 retail industry. One which we've advocated in  
21 Springfield and advocated in front of this  
22 Commission before.

1       Q.     And have you, yourself, performed any cost  
2 of service studies?

3       A.     I have not.

4       Q.     Do you know how a cost of service study is  
5 compiled?

6       A.     Basic primer, yes.

7       Q.     Have you conducted an independent review of  
8 the Com Ed cost of service study?

9       A.     Have not. That's why we have Mr. Baudino.

10      Q.     Would you agree with me that if the Com Ed  
11 cost of service study is not correct, then the  
12 amount of subsidy that you talk about in your  
13 testimony may not be correct?

14      A.     That's true, it could be higher.

15      Q.     And it could be lower; is that correct?

16      A.     That's true.

17      Q.     In your testimony on Page 4, you say that  
18 you oppose perpetuating the current large  
19 interclass rate subsidies; is that correct?

20      A.     I did.

21      Q.     How long have these large interclass rate  
22 subsidies been in existence?

1       **A.**     I can only speak for the 30 years that I  
2     have been at the Illinois Retail Merchants  
3     Association in which time we have intervened from  
4     time to time in electric rate cases, each time on  
5     the same basis.

6       **Q.**     So you're saying that for the past 30 years  
7     there have been large interclass rate subsidies in  
8     Com Ed rates?

9       **A.**     That is what we have stated, yes.

10      **Q.**     Can you tell me what is the amount of  
11     the -- as you would determine the rate subsidy that  
12     the railroad class has in this case?

13      **A.**     You would have to ask Mr. Baudino that.

14      **Q.**     You have no independent knowledge?

15      **A.**     That's true.

16      **Q.**     In your testimony at Page 5, I believe you  
17     state that -- well, first of all, you say on Line  
18     104 that energy costs are one of the top variable  
19     costs that the retail community faces; is that  
20     correct?

21      **A.**     I did.

22      **Q.**     What is the percentage of the operating



1 costs of a retail entity that electric rates  
2 comprise?

3       **A.**     Well, that will depend on whether we are  
4 talking about a mom and pop pharmacy or what line  
5 of business they are in. If it's a grocery store,  
6 it is a much higher percentage of their operating  
7 cost than someone who is open 9:00 to 5:00 without  
8 compressors and freezers, et cetera.

9       **Q.**     Would you agree that the electricity costs  
10 for the average retail trade establishment  
11 comprises only about 3.2 of the operating costs?

12       JUDGE HILLIARD: Percent?

13       MR. BALOUGH: Percent.

14       THE WITNESS: I would have to see that, because  
15 I don't know what that operating cost includes,  
16 whether that includes transportation, whether it  
17 includes cost to console, I can't answer that from  
18 that question.

19 BY MR. BALOUGH:

20       **Q.**     Okay. Your trade group is also known as  
21 IRMA; is that correct?

22       **A.**     It is.

1       Q.     And you were involved in the Affinity Group  
2     billing experiment with Com Ed; is that correct?

3       A.     That would be true.

4       Q.     And under that experiment, that was only  
5     open to IRMA members; is that correct?

6       A.     At Commonwealth Edison's choice, that is  
7     true. By statute, by the way.

8       Q.     And that was a program under which the Com  
9     Ed rates were reduced by what, by about 15 percent  
10    for the IRMA members only?

11      A.     For the folks who were willing to shed  
12    load, who were willing to participate in the load  
13    reduction and reduction in power at high peak  
14    times, demand times, that would be true.

15      Q.     And there was a report by the Illinois  
16    Commerce Commission concerning the results of that  
17    experiment, was there not?

18      A.     That would be true.

19      Q.     Let me show you a copy -- portions of that  
20    report that has been previously admitted in this  
21    case as REACT Cross Exhibit 15. Do you have that  
22    in front of you? I have the full report, by the

1 way, if you need to refer to it. It you could turn  
2 to Page 10 of that report.

3 A. I'm there.

4 Q. And if you could look at the last full  
5 paragraph on that page. And would you agree with  
6 me that according to this report, that electricity  
7 costs comprise only about 3.2 percent of operating  
8 costs for the average retail trade establishment,  
9 according to this report?

10 MR. JENKINS: Would you identify when that report  
11 was made?

12 THE WITNESS: 1992.

13 JUDGE HILLIARD: Actually it had to be after  
14 1992, because it's a report on a law passed in  
15 1997.

16 THE WITNESS: I'm only relying on the footnote  
17 from the Commission report, which says 1992.

18 BY MR. BALOUGH:

19 Q. And since the Affinity -- the Affinity  
20 Program has expired; is that correct?

21 A. That is true.

22 Q. And since that time is it correct that IRMA

1 has a partnership with Exelon Energy?

2 A. No, it is not.

3 Q. Did they have a partnership with Exelon  
4 Energy?

5 A. They never had a partnership with Exelon  
6 Energy.

7 Q. Does IRMA have a preferred electric  
8 supplier arrangement?

9 A. Yes, we do.

10 Q. Is that still ongoing?

11 A. It is.

12 Q. And what is --

13 A. May I interrupt just one second, I want to  
14 clarify, I don't want to be a wise guy, but  
15 partnership when you are a trade association, a  
16 not-for-profit trade association, we do not have  
17 any partnerships, we have Affinity Group buying  
18 programs.

19 Q. Well, let me show you what is on the IRMA,  
20 dot, org website. And it says partnership with  
21 Exelon and that's the reason I used it. So let me  
22 have this marked as CTA Cross Exhibit No. 1.

1 (Whereupon, CTA Cross  
2 Exhibit No. 1 was  
3 marked for identification  
4 as of this date.)

5 BY MR. BALOUGH:

6 Q. First of all, Mr. Vite, is it correct that  
7 IRMA does have a website?

8 A. Correct.

9 Q. And it is at IRMA, dot, Org?

10 A. It is.

11 Q. And are you familiar with that website?

12 A. I am.

13 Q. And what I have handed you is CTA Cross  
14 Exhibit No. 1. Do you recognize that as being one  
15 of the pages from your website?

16 A. It looks familiar, yes.

17 Q. And in this document it indicates that your  
18 members have saved money as a result of this, I  
19 guess we will call it, the preferred electric  
20 supplier arrangement with Exelon Energy, since you  
21 don't like partnership.

22 A. That would be true.

1       **Q.**     What is the amount of savings that your  
2 members have had?

3       **A.**     We estimated, when we last did it, and I  
4 think that would have been in '03 or '04, somewhere  
5 in that timeframe, about \$50 million.

6       **Q.**     And have you updated that report since that  
7 time?

8       **A.**     I think we have, but I'm not sure we have  
9 made a public declaration on either a website or  
10 outside of our internal documents.

11      **Q.**     What is the amount of savings that your  
12 members have had since inception under this IRMA  
13 preferred electric supply relationship with Exelon  
14 Energy?

15      **A.**     I would venture to say it is in the  
16 \$100 million range. But keep in mind, that is  
17 based off of the tariffed rates for the commodity  
18 of electricity, with no relationship at all to the  
19 tariffed rates, either heretofore, or going  
20 forward, with respect to transmission and  
21 distribution. This is exclusively on the commodity  
22 of electricity.

1       **Q.**    And in your -- in your testimony you  
2 discuss the fact that one of the areas of concern  
3 that your members have is higher transportation  
4 costs, is that correct?  It's at Page 5, Line 106.

5       **A.**    Page 5.

6       **Q.**    Line 106.

7       **A.**    Yes.

8       **Q.**    And I presume by that statement that you  
9 mean that your membership is concerned about higher  
10 transportation costs?

11      **A.**    That would be true.

12      **Q.**    Have you done -- first of all, have you  
13 done an analysis to determine if the railroad class  
14 recommendation in this case were to be enacted by  
15 the Commission, what the effect would be on your  
16 members' electric rates?

17      **A.**    I have not, but I believe that Mr. Baudino  
18 has some of that included in his expert testimony.

19      **Q.**    Let me get back, then, to my other question  
20 about the higher transportation costs.  Are you  
21 referring to the the cost of gasoline?

22      **A.**    In that -- if you're talking about my

1 testimony, yes, I was talking about the higher  
2 prices of gasoline, diesel fuel, et cetera, for our  
3 trucks to move down the highway.

4 Q. Okay. What about the cost, for example,  
5 the employees of your members to get to their  
6 location?

7 A. Certainly we are concerned about that.

8 Q. And are you also concerned about the costs  
9 of the customers to get to the locations?

10 A. Certainly we are. Which is why we  
11 supported the sales tax increase, which is one of  
12 our principal legislative issues maintaining the  
13 low sales tax base. But we did for Metra, RTA --  
14 excuse me, RTA, support the sales tax increase in  
15 the five counties surrounding Cook County and the  
16 Cook County sales tax increase for purposes of  
17 maintaining an appropriate mass transit system.

18 I believe that was somewhere in the  
19 vicinity of \$700 million in tax increases. So I  
20 think it would be fair to say that, yes, we are  
21 very interested in both our employees getting to  
22 work and our customers getting to our stores.



1       **Q.**     And I take it by your testimony that you  
2 believe that there are important public policy  
3 reasons why mass transit should be encouraged in  
4 this state?

5       **A.**     I don't know where that is in my testimony,  
6 but the answer is yes we are certainly concerned  
7 about the public policy issues of mass  
8 transportation, which is why we've supported what  
9 I've just discussed. But equally as important is  
10 we are paying our fair share of those sales taxes,  
11 under that example, as are other customers, as are  
12 other businesses, their fair share, they are paying  
13 what they use. In the instance that you are leading  
14 to, we are not interested in paying for someone  
15 else's use for electricity. If people want to have  
16 a tax increase, let's put it up there on the board  
17 and vote on it, not have hidden taxes on the cost  
18 of Corn Flakes.

19       **Q.**     Do you agree that the Illinois Commerce  
20 Commission should encourage the efficient use of  
21 energy and conservation of resources?

22       **A.**     We do.

1       **Q.**     And do you agree that the Commission must  
2     consider the potential adverse impacts of utility  
3     rates on entities that provide public  
4     transportation?

5       **A.**     I believe it's the Commission's  
6     responsibility to follow the statute and to insure  
7     that all people in Illinois are appropriately  
8     paying for their electric cost, whether they are a  
9     homeless shelter, a hospital, a retail store or  
10    mass transportation.

11      **Q.**     Let me ask the question again, because I  
12    don't know if I got a response. Do you agree that  
13    the Commission must consider the potential adverse  
14    impacts of utility rates on entities that provide  
15    public transportation?

16      **A.**     Yes.

17      **Q.**     And do you agree that the CTA, as a  
18    provider of mass public transportation, that that  
19    raises public interest concerns that should be  
20    considered in setting electric rates?

21      **A.**     I'm not sure I know how to answer that  
22    question.

1       **Q.**     Did you read the -- in preparation of your  
2     testimony, did you read any decisions by this  
3     Commission for Com Ed rate increases?

4       **A.**     No.

5       **Q.**     Am I correct that in your testimony, in  
6     your recommendations, that you are not taking into  
7     account any policy considerations as to whether or  
8     not changes in rates for the mass transportation,  
9     ,that is the railroad class, to make sure they do  
10    not unduly burden the millions of customers that  
11    depend on public transportation?

12       MR. JENKINS: Your Honor, I think that's been  
13    asked and answered a few times.

14       JUDGE HAYNES: Sustained.

15    BY MR. BALOUGH:

16       **Q.**     Do you have any reason to believe that the  
17    Commission should not follow its public policy  
18    concerns that it expressed in Docket 05-0597?

19       **A.**     I don't know the answer to that question.

20       MR. BALOUGH: I have no other questions.

21       JUDGE HAYNES: Thank you.

22

1 CROSS EXAMINATION

2 BY

3 MR. GOWER:

4 Q. Mr. Vite,, as you know, my name is Ed  
5 Gower, I represent Metra in this case. I think  
6 we've known each other for a number of years, never  
7 this this context, I might add?

8 A. Good to see you.

9 Q. Nice to see you. As you know there are two  
10 members of the railroad class, the CTA and Metra.  
11 I think you live in the metropolitan area and are  
12 familiar with both of those entities, correct?

13 A. Yes, sir.

14 Q. And are you familiar with the three charges  
15 assessed by Com Ed to nonresidential customers  
16 which are the customer charge, the standard  
17 metering charge and the distribution facilities  
18 charge?

19 A. I am aware of them, yes.

20 Q. Are you aware that the proposed standard  
21 metering charge to the railroad class in the rates  
22 proposed by Commonwealth Edison are higher than

1 those for any other class?

2 A. No.

3 Q. Are you aware that the customer charge  
4 proposed by Commonwealth Edison in this case is the  
5 highest of any other nonresidential rate class?

6 A. No.

7 Q. Are you aware that Commonwealth Edison's  
8 average cost per kilowatt used among the various --  
9 let me restate that.

10 Are you aware that the cost to the  
11 railroad class per kilowatt hour, based on  
12 Commonwealth Edison's initial proposed rates in  
13 this case, are higher than those of any other  
14 nonresidential class, other than the small load and  
15 the watt hour classes?

16 A. No.

17 Q. Are you aware that your expert in this case  
18 concluded that under his preferred cost of service  
19 study analysis, it would show that the railroad  
20 class is paying 24 percent more than it should?

21 A. I am.

22 Q. Do you think that it would be, under the

1 scenario that I just described, do you think that  
2 it would be worthwhile for Commonwealth Edison to  
3 reevaluate its analysis of the cost of service to  
4 the railroad class?

5       **A.**     I don't know the answer to that. But I  
6 would answer it by saying that if they are going to  
7 move to some other study, as Mr. Stowe  
8 presented, and was discussed by Mr. Baudino, that  
9 it would take a hard look at the cost of the medium  
10 load, large load and very large load customers as  
11 well.

12       **Q.**     As well as the railroad class; is that  
13 correct?

14       **A.**     All classes.

15       **Q.**     In your rebuttal testimony, and I'll give  
16 you the line and page number, but I don't think  
17 you'll need to look at it, in your rebuttal  
18 testimony at Pages 5, Lines 90 to 92, you testified  
19 that in your opinion the small, medium, large and  
20 very large nonresidential customer classes, have  
21 been subsidizing other customers for many years.  
22 Do you recall that testimony?

1       **A.**     Yes.

2       **Q.**     Do you have any -- is it your belief that

3       the classes that were mentioned in your testimony,

4       have been subsidizing the railroad class for years

5       and years?

6       **A.**     I don't know that.

7       MR. GOWER: That's all the questions I have,

8       thank you very much.

9       JUDGE HAYNES: Thank you.

10      MR. BALOUGH: Your Honor, I would, at this time,

11      offer CTA Cross Exhibit 1.

12      JUDGE HAYNES: Objections?

13      MR. JENKINS: Which was that?

14      JUDGE HAYNES: The IRMA web page.

15      MR. JENKINS: No objection.

16      JUDGE HAYNES: CTA Cross Exhibit 1 is admitted.

17                   (Whereupon, CTA Cross

18                   Exhibit No. 1 was

19                   admitted into evidence as

20                   of this date.)

21

22

1 CROSS EXAMINATION

2 BY

3 MR. SKEY:

4 Q. Good afternoon, Mr. Vite, ,my name is  
5 Christopher Skey, I'm here on behalf of the react  
6 coalition.

7 A. Good afternoon.

8 Q. Sir, you would agree it is appropriate for  
9 the Commission to consider items like economic  
10 impact and the effect on employment when  
11 considering whether and how much to increase rates?

12 A. Among other things, yes.

13 Q. And the Commission -- you would agree that  
14 the Commission should avoid taking action that  
15 might threaten to have a negative economic impact  
16 in the State of Illinois?

17 A. Yes.

18 Q. And you would agree that the Commission  
19 should avoid taking action that has negative  
20 effects on employment of citizens in Illinois?

21 A. I think that should be part of the  
22 consideration, yes.



1       **Q.**     Now, you would agree that the members of  
2     the commercial group or IRMA, your group, are not  
3     the only stakeholders with the attribute of having  
4     a significant positive impact on the economics of  
5     the State of Illinois; is that correct?

6       **A.**     That would be true.

7       **Q.**     For example, you would acknowledge that  
8     there are members of other customer classes that  
9     would also have positive impact on the economic  
10    situation in Illinois?

11      **A.**     Yes.

12      **Q.**     And you would simply acknowledge that some  
13    of the extra large customers, that is the above  
14    10-megawatt customers, employ substantial numbers  
15    of Illinois citizens as well, wouldn't you?

16      **A.**     Yes.

17      **Q.**     For example, the City of Chicago is a  
18    substantial employer in the State of Illinois,  
19    isn't it?

20      **A.**     Yes.

21      **Q.**     And you would accept, wouldn't you, subject  
22    to check, that the City of Chicago employees range

1 in the area of 40,000 individuals?

2 A. Yes.

3 Q. Would you agree, subject to check, that the  
4 of Metropolitan Water Reclamation District of  
5 Greater CHICAGO employees approximately 2300  
6 individuals?

7 A. Yes.

8 Q. And it's true, isn't it, that industrial  
9 companies and manufactures in the State of Illinois  
10 also employ significant numbers of individuals;  
11 isn't that correct?

12 A. Yes, many of whom would be adversely  
13 affected by this subsidy.

14 Q. Now, in your testimony, and I'll quote it,  
15 but feel free to take a look if you want, it's Page  
16 3 at Lines 64, 65. Let me know when you're there.

17 A. I'm there.

18 Q. You point out that, quote, rising energy  
19 costs are a significant cost component for the  
20 operations of members of our group. Is that  
21 accurate?

22 A. Yes.

1       **Q.**     And by that, I want it to be clear, you're  
2     talking about the IRMA group there, when you say  
3     our group?

4       **A.**     That would be true.

5       **Q.**     Now, you would agree that the, quote,  
6     rising energy costs are not a unique concern to the  
7     members of the IRMA group; is that a fair  
8     statement?

9       **A.**     That would be true.

10      **Q.**     You would agree that under current economic  
11     conditions in the State of Illinois and the nation  
12     more widely, a substantial rate increase  
13     nonresidential customers could have a rippling  
14     effect, in terms of employment or affects on the  
15     community in which the employee is located?

16      **A.**     Among other things, yes.

17      **Q.**     And that would apply to all nonresidential  
18     customers, correct, the largest, the smallest, it  
19     wouldn't be distinct to any particular size of the  
20     nonresidential customers would it?

21      **A.**     Sure.

22      MR. SKEY: No further questions. Thank you, sir.

1 JUDGE HILLIARD: Any other questioners? Does Com  
2 Ed have any questions for this witness.

3 MS. POLEK-O'BRIEN: No, we do not.

4 JUDGE HAYNES: DOE?

5 MR. BRUDER: No.

6 JUDGE HILLIARD: Thank you, Mr. Vite, you are  
7 excused.

8 REDIRECT EXAMINATION

9 BY

10 MR. JENKINS:

11 Q. Redirect. Mr. Vite, you are asked about a  
12 1992 document concerning cost of -- energy costs of  
13 an average retail entity. Do you have any opinion  
14 about the impact of electric costs on retail  
15 businesses in Illinois today?

16 A. As much anecdotally as an opinion, we are  
17 in the process of procuring or working with our  
18 members to procure power for their stores. And the  
19 rate increases are very, very substantial for the  
20 commodity of electricity.

21 Q. And you were asked other questions about  
22 potential -- whether this Commission should

1 consider potential subsidies to the transit  
2 customers. Do you have an opinion as to whether  
3 that should occur via taxes or electric rates?

4 MR. GOWER: I'm going to object I don't think  
5 there was any such question asked.

6 JUDGE HILLIARD: Read the question, please.

7 (Record read as requested.)

8 JUDGE HILLIARD: I don't think there was any  
9 questions about tax subsidies. There was  
10 questioning about electric rate subsidies.

11 MR. JENKINS: I'll rephrase, thank you.

12 BY MR. JENKINS:

13 Q. You were asked questions about whether this  
14 Commission should consider providing special  
15 benefits and rates to transit companies. Do you  
16 have an opinion on that?

17 A. Yes, we believe that the costs of service,  
18 whether it is for mass transportation, electricity  
19 or Corn Flakes, should be fairly apportioned among  
20 those who either create the cost or are  
21 participants in spending dollars that cause the  
22 costs.

1 MR. JENKINS: Thank you, no further questions.

2 JUDGE HILLIARD: Thank, sir.

3 (Witness excused.)

4 MR. SKEY: Yesterday Mr. Townsend had Exhibit 18  
5 which was his chart, we've produced a reduced  
6 version of that, which we would tender to your  
7 Honor, if you would like that, and we have copies  
8 for counsel as well.

9 Would you like the original chart or do  
10 you want me to hang on that?

11 JUDGE HILLIARD: No, we don't want that.

12

13

14 (Change of reporter.)

15

16

17

18

19

20

21

22

1 JUDGE HILLIARD: Earlier, ComEd handed me a  
2 response to the ALJ data request, ComEd No. 47, and  
3 I don't think officially said that we'll admit it  
4 into the record, so I'm going to say it now.  
5 That's all.

6 MS. POLEK-O'BRIEN: Thank you, your Honor.

7 (Whereupon, ComEd  
8 Exhibit No. 47 was  
9 admitted into evidence as  
10 of this date.)

11 MR. FOSCO: We're ready to proceed.

12 JUDGE HAYNES: Okay. We'll remind you that  
13 you're still under oath.

14 And who's questioning now?

15 MR. BERNET: Good afternoon, your Honor.

16 Richard Bernet for Commonwealth Edison.

17 JUDGE HAYNES: Go ahead.

18

19

20

21

22

1                   PETER LAZARE,  
2   recalled as a witness herein, having been  
3   previously duly sworn, was further examined and  
4   testified as follows:

5                   CROSS-EXAMINATION

6                   BY

7                   MR. BERNET:

8       **Q.**     Good afternoon, Mr. Lazare.

9       **A.**     Good afternoon.

10      **Q.**     Now, Mr. Lazare, you have testified before  
11   the Commission that -- that the Commission should  
12   disallow \$111 million out of ComEd's rate base; is  
13   that right?

14      **A.**     I just -- yes.

15      **Q.**     And if I understand your testimony  
16   correctly, there are two categories of costs that  
17   you're concerned about; is that right?

18      **A.**     Yes.

19      **Q.**     And the first one is underground lines,  
20   right?

21      **A.**     Yes.

22      **Q.**     And you concluded that the Commission



1 should disallow \$74.6 million from ComEd's rate  
2 base associated with those costs or that work?

3 It's in your direct at Page 2.

4 A. 74.7?

5 Q. 74.7?

6 A. Yes.

7 Q. And you also recommend that the Commission  
8 disallow 20 -- or \$36.6 million associated with  
9 services; isn't that correct?

10 A. 36.3, I think is the --

11 Q. Oh. 36.3?

12 A. Yeah.

13 Q. Okay. And when you refer to "services,"  
14 Mr. Lazare, you're referring to both services to  
15 provide service to residential customers and  
16 commercial customers; isn't that right?

17 A. Well, services that would relate to the  
18 Account 369.

19 Q. Okay. FERC Account 369, right?

20 A. Yes.

21 Q. And it's your understanding that within  
22 FERC Account 369 would be costs associated with

1 providing service to residential customers, right?

2 A. Yes.

3 Q. And also within that account would be costs  
4 associated with providing service to commercial  
5 customers?

6 A. Yes.

7 Q. And those adjustments are -- well, strike  
8 that.

9 Before you got to the point where you  
10 made the adjustment, you first did a calculation  
11 the result of which you concluded that ComEd's  
12 costs were unreasonable, right?

13 A. Yes.

14 Q. And that's Schedule 5.1?

15 Sorry. I'm going to go through some  
16 numbers. I think it's the first thing attached to  
17 your direct.

18 A. Yes.

19 Q. You have that?

20 A. Yes, I do, but the -- it's also dependent  
21 on 5.2, that conclusion.

22 Q. What I'm talking about right now is not

1 your conclusion about the adjustment. I'm just  
2 talking about your conclusion --

3 A. Right.

4 Q. -- relating to the increase in costs that  
5 you think are unreasonable.

6 A. Right.

7 But in order to say the increase in cost  
8 is unreasonable, I, in essence, had to go a certain  
9 distance down the road in my adjustment to say  
10 here's your company's increase and then here's my  
11 calculation of an alternate increase based upon  
12 increase in materials costs and increase in labor  
13 costs.

14 And I say, at that point, well, the two  
15 numbers diverge. So, at that point, that's when I  
16 could conclude that it's unreasonable.

17 Q. Well, there's no other calculation in your  
18 testimony about unreasonable costs that is set  
19 forth in this document; isn't that right?

20 MR. FOSCO: I'm going to object, your Honor. I  
21 think the witness has testified that he has in  
22 Schedule 5.2.

1 JUDGE HILLIARD: Over- -- no. Sustained.

2 BY MR. BERNET:

3 Q. Is it your testimony, Mr. Lazare, that

4 Schedule 5.2 contains a reference to the 48.9

5 percent increase in unit costs for underground

6 conduit, conductors and devices?

7 JUDGE HILLIARD: If you stood next to the

8 exhibit and faced the reporter, he could hear you a

9 little better.

10 MR. BERNET: That would be a good idea, your

11 Honor. Thank you.

12 BY MR. BERNET:

13 Q. Mr. Lazare, let me see if I can cut this

14 short. Let me direct you to your testimony at

15 Page 15.

16 A. Okay.

17 Q. And, in particular, Lines 345 to 347.

18 A. Okay.

19 Q. And so beginning at Line -- I'm sorry. At

20 Line 343 to 347, that's where you testify about the

21 48.9 percent increase; isn't that right?

22 A. Correct.

1       Q.     And that's the increase that's reflected at  
2     the bottom of Schedule 5.1?

3       A.     Yes.

4       Q.     Okay.  That's all I wanted.  That's all I  
5     wanted.

6       A.     Okay.

7       Q.     Okay.  And then your calculation of the  
8     what you believe to be the unreasonable increase in  
9     the cost of services is also depicted on  
10    Schedule 5.1?

11               And I can give you a reference to your  
12    testimony.

13      A.     Okay.

14      Q.     Line 335 to 337.

15      A.     Okay.  The only quibble I would have with  
16    you is that that line says that there's a  
17    significant increase and doesn't necessarily mean  
18    if it's significant, that it's unreasonable.

19      Q.     Okay.  Significant.  I'll accept that.

20      A.     So...

21      Q.     But the significant increase in ComEd's  
22    costs related to services is what is set forth in

1 Schedule 5.1?

2 A. Right.

3 Q. So within this document, these four corners  
4 is what you consider to be the unreasonable or  
5 the unexplained costs for those two accounts?

6 A. No, it's -- that shows that the costs have  
7 risen significantly. But, as I said, 5.1 does not  
8 demonstrate that it's unexplained. The purpose of  
9 5.1 establishes that there's been a significant  
10 increase in those accounts.

11 So, as I discussed earlier, does not  
12 therefore mean that because it's significant, that  
13 it's unexplained.

14 Q. Well, is it your testimony that the average  
15 unit costs that are depicted in Schedule 5.1 are  
16 explained?

17 A. No, that's not my testimony.

18 I'm just saying the schedule itself on  
19 its own does not demonstrate that it's unreasonable  
20 and that's just a point I'm trying to make.

21 Q. Well, what is your conclusion -- tell me  
22 what your conclusion is about the 48.9 percent with

1     respect to underground cable.

2           **A.**     That it's a significant increase.

3           **Q.**     That's a significant increase comparing the  
4     year 2000 and 2004 against the year 2005 and 2006?

5           **A.**     Yes.

6           **Q.**     Okay. All right. So let's talk about how  
7     you got there.

8                     So the way you calculated this,  
9     Mr. Lazare, is you looked at the number -- and I'm  
10    referring to Line 366 and 367 of Schedule 5.1.

11                    You looked at the FERC balances in these  
12    accounts for the years 2000 to 2004 and you added  
13    all those dollars up and divided by five; is that  
14    right?

15           **A.**     Yes.

16           **Q.**     And the result of that calculation gave you  
17    what you believe -- gave you the year 2000 to 2004  
18    average dollar amount which is the 203,036,801?

19           **A.**     Yes.

20           **Q.**     Okay. And then you -- then you looked at  
21    the miles of underground conductors, added in each  
22    of those five years and you added those together

1 for that five-year period, right?

2 A. Yes.

3 Q. And you divided that by five?

4 A. Yes.

5 Q. And that -- and that got you 1,233 as the

6 average unit installation of underground lines?

7 A. Yes.

8 Q. And then what you did is you divided the

9 203,036,801 by the 1,233 to come up with 164,642?

10 A. Yes.

11 Q. And so it's your determination that 164,162

12 is the average unit cost for the installation of a

13 mile of underground conduit during that period?

14 A. Yes.

15 JUDGE HILLIARD: I think it's 164,642.

16 MR. BERNET: I'm sorry, your Honor.

17 BY MR. BERNET:

18 Q. 164,642.

19 A. Yes.

20 Q. And then what you did with respect to the

21 period 2005 and 2006 is you did essentially the

22 same calculation as we just discussed, right, to



1 get the average unit cost for miles of conductor  
2 installed in '05 and '06?

3 A. Yes.

4 Q. And so that cost is identified on your --  
5 on your chart as \$245,170?

6 A. Yes.

7 Q. And then what you did is you found out what  
8 the difference between those unit costs were and  
9 you determined that was \$80,528?

10 A. Yes.

11 Q. And the difference between the 164 and the  
12 245, that's where you get the 48.9 percent?

13 A. Yes.

14 Q. Okay. And just to save time, you basically  
15 did the same calculations for services, too?

16 A. Yes.

17 Q. And what you concluded was that the  
18 difference in costs was an 83.8 percent increase?

19 A. Yes.

20 Q. All right. In looking at these costs, you  
21 don't compare these costs to the costs of any other  
22 Illinois utilities, do you?

1       **A.**     No.

2       **Q.**     And you don't compare these costs to the  
3 costs of any other utilities in the country?

4       **A.**     No.

5       **Q.**     And you don't compare these costs to any  
6 recognized industry benchmark, do you?

7       **A.**     No.

8       **Q.**     Mr. Lazare, your calculations also don't  
9 account for inflation, do they?

10      **A.**     No.

11      **Q.**     And as an economist, you know that ComEd's  
12 costs are subject to inflation?

13      **A.**     That -- I would agree that certain costs  
14 can increase over time.

15      **Q.**     Well, these costs increase -- they're  
16 influenced by inflation, aren't they?

17      **A.**     Well, there certainly can be increases in  
18 the materials and the nonmaterial costs. I agree.

19      **Q.**     But they're also influenced by inflation?

20      **A.**     Well, I'm not clear what -- when you say  
21 "inflation," what additional factors beyond the  
22 materials and nonmaterial costs would impact

1 those --

2 Q. Well --

3 A. -- to raise those prices.

4 Q. Well, let me ask you this:

5 These are actual numbers that were set

6 forth in ComEd's FERC Form 1, right?

7 A. Yes.

8 Q. And so there is no specific adjustment in

9 these numbers for inflation?

10 A. That's correct.

11 Q. Okay. And you're aware, too, as an

12 economist, that there are ways to calculate the

13 inflation rate for construction in the utility

14 industry, right?

15 A. Yes.

16 Q. And you read the testimony of Mr. Williams

17 in this case?

18 A. Yes.

19 Q. And you read his work papers?

20 A. Yes.

21 Q. What exhibit we are on?

22 JUDGE HAYNES: 15.

1 MR. BERNET: May I approach?

2 JUDGE HILLIARD: Yes.

3 MR. BERNET: I'm handing you now what's been  
4 marked as ComEd Cross Exhibit 13.

5 (Whereupon, ComEd Cross  
6 Exhibit No. 13 was  
7 marked for identification  
8 as of this date.)

9 BY MR. BERNET:

10 Q. And that's a document called Rising Utility  
11 Construction Costs. Do you recognize that  
12 document?

13 A. Yes.

14 Q. And it's identified at the top as ComEd  
15 Exhibit 4.0, WP1. And the name of the document,  
16 which is a work paper for George Williams'  
17 testimony, and the name of the document is Rising  
18 Utility Construction Costs and it's dated  
19 September 2007.

20 And I'd like to direct your attention,  
21 Mr. Lazare, to Page 13 of that document. It's a  
22 chapter entitled Factors Spurring Rising

1 Construction Costs. Then I'd like --

2 MR. FOSCO: Just for -- do you mean 13 of 37?

3 MR. BERNET: Yeah, I know it's confusing.

4 Pardon me. I'm looking at the bottoms.

5 MR. FOSCO: Thank you.

6 THE WITNESS: Okay. I'm there.

7 BY MR. BERNET:

8 Q. Okay. And then I'd like to direct your  
9 attention to Page 27 at the bottom.

10 A. Okay.

11 Q. And at the top of Page 27, can you read  
12 those two sentences, please?

13 A. Okay. It says, Figure 19 shows  
14 distribution plant costs which include poles,  
15 conductors, conduit, transformers and meters.  
16 Overall distribution plant costs tracked the  
17 general inflation rate very closely between 1991  
18 and 2003. However, it then increased 34 percent  
19 between January 24, 2004 and January 2007, a rate  
20 that exceeded four times the rate of general  
21 inflation.

22 Q. Do you have any reason to question that

1 information?

2 A. No.

3 Q. And I'd like to direct your attention to  
4 Page 20 of that document, and the top of that page  
5 is labeled Labor Costs, right?

6 A. Yes.

7 Q. And reading about halfway down that  
8 paragraph, do you see the sentence that begins with  
9 "between January 2001"?

10 A. Yes.

11 Q. Can you read that, please?

12 A. Between January 2001 and January 2007, the  
13 general inflation rate, parentheses, measured by  
14 the GDP deflator, increased by about 15 percent.  
15 During the same period, the costs of craft labor  
16 and heavy construction labor increased about 26  
17 percent while the common labor increased 27 percent  
18 or almost twice the rate of general inflation.

19 Q. Do you have any reason to doubt that  
20 information?

21 A. No.

22 Q. And you agree with me that in connection

1 with the installation of underground conduit, you  
2 would consider that heavy construction, wouldn't  
3 you?

4       **A.**     Yes.

5       **Q.**     And you would also -- you also agree with  
6 me that in connection with performing the work that  
7 is the subject of these two adjustments, that ComEd  
8 employs craft labor?

9       **A.**     Yes.

10       **Q.**     Now, Mr. Lazare, what you've done in -- I'm  
11 going to ask you some more questions about  
12 Schedule 5.1.

13                   So what you've done here is you've  
14 compared an average over a five-year period to an  
15 average over a two-year period, right?

16       **A.**     Yes.

17       **Q.**     And if -- and you didn't do any other  
18 calculations in connection with this schedule,  
19 right?

20       **A.**     That's correct.

21       **Q.**     So you didn't compare a four-year period to  
22 a two-year period, right?

1       **A.**     No.

2       **Q.**     And if you did that, you would get a  
3     different result than the results that are set  
4     forth here, wouldn't you?

5       **A.**     I have no idea what the result would be.

6       **Q.**     Well, it wouldn't match precisely, would  
7     it?

8       **A.**     Only random chance that it would.

9       **Q.**     Okay. And so that's the same -- if you  
10    compare a two-year period 2003 and 2004 to 2005 and  
11    6, you'd get different a result then, too, wouldn't  
12    you?

13      **A.**     Most likely.

14      **Q.**     And the same thing if you did a three-year  
15    period, 2002 to 2004 versus the two-year period '05  
16    and '06?

17      **A.**     Yes.

18      **Q.**     You testified in ComEd's last rate case,  
19    didn't you?

20      **A.**     Yes.

21      **Q.**     And what was the test year in that case?

22      **A.**     I think it was 2004.



1       Q.     And do you recall -- you testified in the  
2 case before that, too, right, 01-0423?

3       A.     I think so.

4       Q.     And the test year in that case was the year  
5 2000, wasn't it?

6       A.     That sounds right.

7       Q.     It wouldn't be unreasonable, would it,  
8 Mr. Lazare, for the Commission to consider a  
9 two-year period compared to a two-year period for  
10 purposes of this case, would it?

11      A.     You said wouldn't be unreasonable?

12      Q.     Wouldn't be.

13      A.     Well, I have not looked at it and there's  
14 no evidence on the record as a basis for comparing  
15 two years before and two years after.

16      Q.     I understand that.

17               I'm saying if the Commission decided to  
18 follow your methodology, but decided not to use the  
19 entire period that you used for purposes of  
20 calculating historical costs, it wouldn't be  
21 unreasonable for the Commission to select some  
22 other period?

1       **A.**     Well, I would have to look at each period  
2     and just -- I would have to decide based upon the  
3     specific proposal whether I thought it was  
4     reasonable or not.

5       **Q.**     Are you saying it would depend on the  
6     results?

7       **A.**     No.

8       **Q.**     So are you saying that the only reasonable  
9     period to look at in your view is the five-year  
10    period against the two-year period?

11      **A.**     I haven't drawn a conclusion about whether  
12    it's the only reasonable period.

13      **Q.**     I know. I'm asking you if there's other  
14    reasonable periods.

15      **A.**     I would have to look at it. I haven't  
16    drawn a conclusion about whether another period  
17    would be reasonable, since that was not a focus of  
18    my testimony.

19      **Q.**     Directing your attention, Mr. Lazare, to  
20    Page 7 of your direct testimony, Line 151, Line  
21    152. Can you read that, please?

22      **A.**     The use of older data produces a less

1 precise picture of the current state of ComEd's  
2 system. There can be significant since assets are  
3 being retired as well as added.

4 Q. Okay. So having read that, do you now  
5 agree with me that it might be reasonable for the  
6 Commission to consider a more recent period than  
7 what you consider?

8 A. Not necessarily. I think it's -- it's --  
9 for -- at different contexts in which I wrote that  
10 sentence. It wasn't specifically applicable to my  
11 adjustment.

12 Q. And is it your testimony that it's not  
13 applicable to this data?

14 MR. FOSCO: You're asking if that statement was  
15 not about that data?

16 BY MR. BERNET:

17 Q. No, I'm asking him -- set aside what the  
18 context was, okay?

19 It's your belief that statement's true  
20 in your mind, isn't it?

21 A. Yes --

22 MR. FOSCO: Your Honor, I'm going to object. I

1 think he's taking statements out of context.

2                   This was a specific statement about test  
3 year data and what was presented by Mr. Williams,  
4 and he's taking this one statement out of context  
5 about historical.

6       MR. BERNET: I can ask him the question  
7 regardless.

8       JUDGE HILLIARD: I think the witness is fully  
9 capable of answering and incorporating that  
10 information in his answer.

11                   You can answer, sir.

12       THE WITNESS: I'm sorry. The question again?

13       MR. BERNET: Read it back, please.

14                   (Record read as requested.)

15       THE WITNESS: I'm saying my statement there is  
16 not applicable to my -- data on which I base my  
17 adjustment.

18 BY MR. BERNET:

19       **Q.** Okay. So it's your testimony, Mr. Lazare,  
20 that that statement only applies to the information  
21 you're referring to there?

22       **A.** Yes.

1       Q.     And so in your view, the use of older data  
2 produces a less precise picture of the current  
3 state of ComEd's system does not apply to your  
4 analysis in Schedule 5.1?

5       MR. FOSCO:   Again, I'm going to object because  
6 the testimony there was that they had left out  
7 intervening years, which is not the situation here.

8               I think it mischaracterizes his  
9 testimony.

10       MR. BERNET:   I'm not trying to characterize his  
11 testimony.   I'm asking him a question about  
12 something that was written here.

13 BY MR. BERNET:

14       Q.     Do you understand the question?

15       A.     I will say that --

16       JUDGE HILLIARD:   Overruled.

17               Go ahead.

18       THE WITNESS:   I will say that the statement in  
19 my testimony was -- said it was the data on which  
20 Mr. Williams provided a current view of the ComEd  
21 system was out of date and -- but I would say that  
22 the older data on which I'm basing my adjustment --

1 my adjustment is relevant for the purposes on which  
2 I'm trying to identify cost trends over time that  
3 supports my proposed adjustment.

4 BY MR. BERNET:

5 Q. So that was a "no"?

6 MR. FOSCO: Now I'm going to object. I think --

7 JUDGE HILLIARD: I think his answer stands. You  
8 can ask him another question.

9 BY MR. BERNET:

10 Q. All right, Mr. Lazare. Let's take a look  
11 at what happens if you use your data, but you get  
12 rid of the oldest period.

13 And what I'll represent to you is I have  
14 taken the exact same data that you used to  
15 calculate your 48 percent adjustment --

16 MR. FOSCO: Your Honor, can we get copies of  
17 this?

18 MR. BERNET: Yeah, I'm sorry.

19 JUDGE HILLIARD: Please.

20 MR. FOSCO: So I don't have to read across the  
21 room.

22 MR. BERNET: I understand.

1 MR. FOSCO: And can I have my own copy?

2 MR. BERNET: Yes, you can. I'd like to mark  
3 this as ComEd Cross Exhibit 14.

4 (Whereupon, ComEd Cross  
5 Exhibit No. 14 was  
6 marked for identification  
7 as of this date.)

8 BY MR. BERNET:

9 Q. So I'll represent to you, Mr. Lazare, that  
10 what I have done here is I have simply eliminated  
11 the most stale data from your analysis. So I have  
12 eliminated --

13 MR. FOSCO: I'm going to object to the  
14 characterization of "stale."

15 JUDGE HILLIARD: Sustained.

16 BY MR. BERNET:

17 Q. Okay. I've eliminated the oldest data from  
18 your analysis. So I eliminated the year 2000. And  
19 then I did the exact same calculations you did in  
20 terms of calculating an average for the years 2001  
21 through 2004 as opposed to 2000 through 2004.

22 Assuming that I did the math correctly,

1 would you accept the data on this exhibit? I have  
2 a calculator if you need it.

3 JUDGE HILLIARD: Counsel, do you have extra  
4 copies of ComEd Exhibit 13? I don't know if I got  
5 one of those.

6 MR. BERNET: Sure.

7 JUDGE HILLIARD: Is that the document, the long  
8 document? That's this?

9 MR. BERNET: About the rising cost.

10 JUDGE HILLIARD: I've got it.

11 MR. BERNET: Yeah, I thought I gave it to you.

12 THE WITNESS: I would say, assuming that it was  
13 calculated correctly.

14 BY MR. BERNET:

15 Q. You would accept that?

16 A. I would accept that.

17 Q. Okay. Let me -- now, I'd like to talk to  
18 you, Mr. Lazare, about your adjustment. And I'm  
19 referring now to Schedule 5.2, Page 2 of 2. And  
20 there's a starting point on this document I'd just  
21 like make sure we all understand.

22 So, Mr. Lazare, you've calculated in



1 Schedule 5.1 the average unit cost ComEd would  
2 incur -- or the average unit costs ComEd incurred  
3 to uninstall -- install underground cable as  
4 164,642, right?

5 A. Yes.

6 Q. Okay. And then that was the starting point  
7 for your analysis of your adjustment?

8 A. Yes.

9 Q. And I'll represent to you this is a blowup,  
10 Mr. Lazare, of the Schedule 5.2.

11 So what you've done here is you've taken  
12 that unit cost figure and you've broken it down  
13 between materials and nonmaterials, right?

14 A. Yes.

15 Q. And so you've determined that 27.6 percent  
16 of those unit costs are materials and 72.4 percent  
17 are nonmaterials?

18 A. Yes.

19 Q. And then what you did with respect to  
20 material cost is you increased the material costs  
21 by 60 percent to get a 2000 -- a proxy for the 2005  
22 and 2006 of 72,706, right?

1       **A.**     Yes.

2       **Q.**     And then you've also escalated the cost of  
3     the nonmaterials by 3.5 percent per year to get a  
4     number of 134,453?

5       **A.**     Yes.

6       **Q.**     And so that's what your total calculated  
7     per unit cost is. That's the 207,159, right?

8       **A.**     Yes.

9       **Q.**     And so that's your view of what ComEd's  
10    costs should have been in 2005 and 2006, isn't it?

11      **A.**     Yes.

12      **Q.**     And so the next thing you did was you  
13    compared that average calculated cost to the actual  
14    average that you calculated on Schedule 5.1, right?  
15    That's 245,170.

16      **A.**     Yes.

17      **Q.**     And by subtracting those two, you got the  
18    38,011, which is the per unit adjustment from the  
19    Company's proposed unit cost?

20      **A.**     Yes.

21      **Q.**     And then you multiplied that by the  
22    number -- by the miles of underground cable that

1 was installed between 2005 and 2006?

2 A. Yes.

3 Q. And that's where you get \$74,691,000?

4 A. Yes.

5 Q. And you don't know what that result would  
6 be if you -- if you used the data I calculated  
7 using the four-year period, right, that we just  
8 talked about. You don't know what that result is?

9 A. I think I'm going to find out very quickly.

10 MR. BERNET: I'm going to mark as ComEd Exhibit  
11 15, Cross Exhibit 15.

12 JUDGE HILLIARD: Yes.

13 (Whereupon, ComEd Cross  
14 Exhibit No. 15 was  
15 marked for identification  
16 as of this date.)

17 BY MR. BERNET:

18 Q. So I'll represent to you, Mr. Lazare, that  
19 what this is is a calculation of the proposed  
20 adjustment using the exact same methodology you  
21 used, but just taking off the year 2000.

22 So I'll represent to you, Mr. Lazare,

1 that I took the unit cost that resulted from my  
2 calculation, which was 189,372 which is at the  
3 bottom of Cross Exhibit 14; took that amount and  
4 then I broke it down by materials and nonmaterials  
5 just the same way you did.

6                   And then I increased the materials cost  
7 by 60 percent and I increased the other costs by  
8 3.5 percent and I got a total calculated per unit  
9 cost of 235,638. Would you accept, subject to  
10 check, that these calculations are accurate?

11       **A.**     Yes.

12       **Q.**     Now, Mr. Lazare, you read the testimony of  
13 Mr. McMahan and Mr. Williams?

14       **A.**     Yes.

15       **Q.**     And those are the two ComEd witnesses that  
16 testified concerning plant additions since 2005,  
17 right?

18       **A.**     I know that they both testified in that. I  
19 can't tell you a hundred percent whether anybody  
20 else didn't discuss plant additions.

21       **Q.**     Do you have an understanding, Mr. Lazare,  
22 of what a unique project is in the context of

1 ComEd's construction work?

2       **A.**    I can't give you a specific definition.

3       **Q.**    I understand.

4                But, I mean, did you have a general

5 understanding?

6       **A.**    Well --

7       **Q.**    I can --

8       **A.**    -- they identify a number of unique

9 projects, you know, where there's a -- they have a

10 lot of what they call blanket projects, for

11 example, like any blanket projects to put in -- to

12 provide service to customers and --

13       **Q.**    I'm not --

14       **A.**    -- considered a unique project or maybe

15 that's a series of projects or...

16       **Q.**    I understand. I'm just -- I just wanted to

17 know, excuse me, if you understood that there was

18 two kinds of projects that ComEd uses in its

19 construction, unique projects and blanket projects.

20       **A.**    Well, I understand that there'll be

21 specific projects that -- for example, for a

22 substation versus more generalized projects to

1 provide service for customers.

2 MR. BERNET: May I approach?

3 JUDGE HILLIARD: Hm-hmm.

4 BY MR. BERNET:

5 Q. Sorry. I only have two copies. I'm going  
6 to hand you a correct -- direct testimony of --  
7 sorry, I only have one copy -- of Mr. McMahan.  
8 Sorry. And I'd like to direct your attention to  
9 Page 5 of that testimony and, specifically,  
10 Mr. Lazare, Lines 101 to 104 on Page 5 and 105 to  
11 110 on Page 6.

12 A. Yes.

13 Q. So it's that part of Mr. McMahan's  
14 testimony where he discusses unique projects and  
15 blanket projects, right?

16 A. Yes.

17 Q. And is it your understanding that with  
18 respect to ComEd's construction program, that all  
19 of its projects fall into one of those categories?

20 A. That's what he indicates.

21 Q. Okay. And so I think what he testifies to  
22 is that any project that has an anticipated cost of

1 over \$100,000 would be considered a unique project.  
2 Do you agree with that?

3 A. That's undertaken only once, yes.

4 Q. And by "unique project," do you have an  
5 understanding that that means that it's managed by  
6 a project manager?

7 A. I don't know specifically that detail,  
8 but...

9 Q. Do you know whether or not unique projects  
10 have to go through a challenge process?

11 A. Yes, that's my understanding.

12 Q. And you understand that the purpose of the  
13 challenge process is to determine whether or not  
14 projects are necessary?

15 A. Yes, and I would also think it's also the  
16 best way to do the project as well.

17 Q. And another thing that the challenge  
18 process does is it ensures that what ComEd invests  
19 in is prudent?

20 A. That's what it purports to do.

21 Q. Do you have any disagreement with that?

22 A. Well, I don't have any -- I can't say for

1 sure that that's exactly what happens under the  
2 challenge process.

3 Q. That's what -- that's what its goal is,  
4 right?

5 A. That's what they claim to do.

6 Q. That's what its goal is, right?

7 A. That's the claim.

8 Q. And it's also a goal of the challenge  
9 program to ensure that ComEd invests in the  
10 least-cost solution?

11 A. That's what it claims to do, yes.

12 Q. And if a project doesn't pass the challenge  
13 test, then it kind of goes back to the drawing  
14 board?

15 A. I would think so. That sounds right.

16 Q. And so is it your understanding,  
17 Mr. Lazare, that projects other than unique  
18 projects are managed through blanket projects?

19 A. Yes.

20 Q. So any individual project that had a value  
21 of less than \$100,000 would be in a blanket  
22 project?



1       **A.**     I would assume so, yes.

2       **Q.**     I want to refer you back to Schedule 5.1.

3     And, specifically, Mr. Lazare, I'd like to direct  
4     your attention to ComEd's costs in Accounts 366,  
5     367 and 369 in the years 2005 and 2006.

6                 Would you accept, subject to check,  
7     Mr. Lazare, that the total amount of investment in  
8     those three accounts for those two years was  
9     approximately \$609 million.

10      **A.**     Sounds right.

11      **Q.**     And so would you have an understanding that  
12     with respect to that \$609 million, that that would  
13     represent -- the projects that add up to that  
14     amount would either be managed as a unique project  
15     or a blanket project?

16      **A.**     Yes.

17      **Q.**     Mr. Lazare, you were on the service list  
18     for purposes of discovery in this case, weren't  
19     you?

20      **A.**     Yes.

21      **Q.**     And so whenever ComEd answered a data  
22     request, you received it, right?

1       **A.**     Yes.

2       MR. BERNET:   I'm going to hand you -- may I

3   approach?

4       JUDGE HILLIARD:   Yes.

5                               (Whereupon, ComEd Cross

6                               Exhibit No. 16 was

7                               marked for identification

8                               as of this date.)

9   BY MR. BERNET:

10      **Q.**     I'm going to hand you what's been now

11   marked as ComEd Cross Exhibit 15?

12      JUDGE HAYNES:   16.

13      JUDGE HILLIARD:   16.

14   BY MR. BERNET:

15      **Q.**     And, Mr. Lazare, that's a data request

16   response from ComEd to IIEC.   It's No. 2.37.

17      **A.**     Yes.

18      **Q.**     And you received that response, didn't you?

19      **A.**     I don't recollect specifically; but if it

20   was sent to everyone on the service list, then I

21   got a copy.

22      **Q.**     May I approach?

1                   I'm sorry. I have one copy of this. I  
2 just wanted to refresh your recollection. I've  
3 handed you a copy of an e-mail dated December 19th.  
4 Does that refresh your recollection you got it on  
5 December 19th?

6       **A.** I receive -- if -- it looks like I received  
7 it, but I don't remember actually having received  
8 it. I just got a lot of e-mails and a lot of data  
9 request responses, but I didn't read all of them.

10       **Q.** I understand.

11                   But what I showed you was an e-mail from  
12 Judy Lapinski (phonetic) dated December 19th, 2007,  
13 and it's listed to, and there's a bunch of people  
14 listed and your name's one of them. And it says,  
15 Subject: ComEd 2007 rate case discovery, and IIEC  
16 2.37 is listed there?

17       **A.** That's correct.

18       **Q.** So if this document's accurate, you would  
19 have gotten this about December 19th. You might  
20 not have read it that day, but you got it?

21       **A.** Correct.

22       **Q.** And so, Mr. Lazare, this data request, the

1 request is for each actual and proposed individual  
2 distribution plant capital addition since 2000 --  
3 since the 2005 rate case. Please provide a copy of  
4 all final authorizations which are required for all  
5 capital addition projects over \$500,000.

6                   You see that?

7       **A.**     Yes.

8       **Q.**     And so attached to that document is --  
9 would you accept, subject to check, is a project  
10 authorization form for every single unique project  
11 completed by ComEd between January 1, 2006 and  
12 November 30th, 2007?

13       MR. FOSCO: Well, your Honor, the data request  
14 says it's only for projects over one million  
15 dollars.

16       MR. BERNET: I'm sorry. I meant that. I'm  
17 sorry.

18       MR. FOSCO: You didn't state that, Counsel.

19       MR. BERNET: Okay. I apologize.

20       MR. FOSCO: You said every single project.

21 BY MR. BERNET:

22       **Q.**     Okay. So do you accept, Mr. Lazare, that

1 with respect to every single unique project put  
2 into service by ComEd between January 1, 2006 and  
3 November 30, 2007 over a million dollars, the  
4 project authorization form is in there?

5 A. That's what it says.

6 Q. You have no reason to doubt that, right?

7 A. No.

8 Q. Do you know what a project authorization  
9 form is?

10 A. It appears to provide the go ahead for --  
11 the go ahead for a project.

12 Q. Are you familiar with ComEd's capital  
13 approval authorization process?

14 A. No.

15 Q. Would you accept, subject to check, that  
16 those forms essentially approve unique projects  
17 by -- through ComEd's capital authorization  
18 process?

19 A. Yes.

20 Q. I'll represent to you, Mr. Lazare, that  
21 there are 110 project authorization forms attached  
22 that -- to that data request.

1           Based upon what we've discussed so far,  
2   would you agree with me that with respect to the  
3   \$609 million that was invested by ComEd in those  
4   three accounts for 2005 and 2006, to the extent a  
5   unique project exceeded a million dollars, that its  
6   project authorization form would be attached to  
7   this data request response?

8       **A.**    To the extent that there are projects over  
9   a million dollars -- projects over a million  
10   dollars -- I should say capital projects over a  
11   million dollars that pertain to those three  
12   accounts, I would assume that the authorization was  
13   within this data response.

14       **Q.**    If ComEd answered the question correctly,  
15   right?

16       **A.**    Yes.

17       **Q.**    Did you do any investigation with respect  
18   to whether or not any of those 110 projects related  
19   to the three categories of costs that are the  
20   subject of your disallowance?

21       **A.**    No.

22       **Q.**    Your testimony -- strike that.

1                   Mr. Lazare, in connection with this  
2 case, you sent a number of data requests to ComEd,  
3 didn't you?

4       **A.**     Yes.

5       **Q.**     Over a hundred, ballpark?

6       **A.**     I'll accept it, yes.

7       **Q.**     And in those data requests, you never asked  
8 a single question about a unique project; isn't  
9 that right?

10      **A.**     That's correct.

11      **Q.**     And your testimony also contains no  
12 analysis of any unique project; isn't that right?

13      **A.**     That's correct.

14      **Q.**     Mr. Lazare, you're also aware that ComEd  
15 set up a data room in Springfield in connection  
16 with this case, right?

17      **A.**     Yes.

18      **Q.**     And your office is in Springfield?

19      **A.**     Yes.

20      **Q.**     And that data room contained thousands of  
21 pages of documents related to this case?

22      **A.**     Yes.

1       Q.     And you visited that data room in December  
2 of '07?

3       A.     That sounds right, yes.

4       Q.     How much time did you spend there?

5       A.     I'd say two to four hours.

6       Q.     In that two to four hours, how many  
7 construction project files did you review?

8       A.     I can't remember specifically how many, if  
9 any -- I can't remember specifically what we  
10 reviewed with respect to construction files.

11      Q.     Okay. And that was the only time you  
12 visited the data room; isn't that right?

13      A.     That's correct.

14      Q.     Are you familiar with the concept of a  
15 field audit?

16      A.     Yes.

17      Q.     Can you tell us what that is?

18      A.     Well, for the Commission Staff, that's when  
19 they go visit utility offices and collect data on  
20 site.

21      Q.     Interview people?

22      A.     That's possible, yes.



1       Q.     Learn what the case is about?

2       A.     It's certainly possible.

3       Q.     Learn about the construction approval

4 process?

5       A.     Yes.

6       Q.     And Staff conducted its field audit in

7 connection with this case on December 5th, right?

8       A.     I don't remember the date.

9       Q.     And on December 5th, certain staff members

10 went to Oak Brook -- well, you don't remember the

11 day, but you do remember that a field audit

12 occurred, right?

13       A.     I don't remember the field audit.

14       Q.     Well, if I represent to you that there was

15 a field audit, do you have any reason to believe

16 that didn't occur?

17       A.     No.

18       Q.     And if I told you that Mr. Griffin

19 participated in that field audit, would you have

20 any basis to disagree with that?

21       A.     No.

22       Q.     And what was Mr. Griffin's responsibility

1 in connection with this case?

2 MR. FOSCO: You're asking if he knows?

3 BY MR. BERNET:

4 Q. If you know.

5 Everything's if he knows.

6 A. I understand that he addressed rate base  
7 additions focusing on pro forma additions and --  
8 among other areas.

9 Q. Okay. And that's really what I'm  
10 interested in.

11 So he analyzed -- is it fair to say he  
12 analyzed ComEd's rate base for costs that were  
13 placed into service after December 31, 2006?

14 A. That sounds right.

15 Q. And his analysis would have included the  
16 three FERC accounts that are the subject of your  
17 analysis?

18 A. I don't know exactly whether he looked at  
19 those specifically or not.

20 Q. I didn't ask you that.

21 I said his -- the rate base after  
22 12/31/06 would have included costs associated with

1 those accounts, right?

2 A. I would assume so, yes.

3 Q. And would you accept that Mr. Linkenback  
4 also attended that field audit?

5 A. Yes.

6 Q. And what was Mr. Linkenback's  
7 responsibility with respect to plant additions in  
8 this case?

9 A. I know that he had testimony on the riders.  
10 I don't remember his specific plant.

11 Q. Do you remember whether or not he did an  
12 analysis of the F-4 projects?

13 A. No, I don't remember that analysis.

14 Q. Do you know what the F-4 projects are?

15 A. No.

16 Q. But you didn't attend that field audit, did  
17 you?

18 A. No.

19 Q. I'd like to refer your -- refer you to  
20 Page 30 of Mr. McMahan's testimony. You there?

21 And at Page 30, Mr. McMahan testified  
22 that \$770 million of ComEd's plant additions in

1 2005 and 2006 related to blanket projects. Do you  
2 see that? It's Line 632.

3 A. He says that's 770 million of your rate  
4 base additions.

5 Q. And is it your understanding that 770  
6 million was placed into service in 2005 and 2006?

7 A. He doesn't indicate.

8 Q. Okay. And turning to Page 32 of  
9 Mr. McMahan's testimony, and specifically at  
10 Line 678, he testifies that ComEd spent \$182  
11 million in capital costs installing residential --  
12 services for new residential customers?

13 A. Yes.

14 Q. And Mr. McMahan also testifies that ComEd  
15 spent 103 million installing new commercial  
16 services?

17 A. Yes.

18 Q. In connection with your investigation in  
19 this case, you didn't send ComEd any questions  
20 about the new business blanket projects, did you?

21 A. I had a phone conversation with Katie  
22 Houtsma and Stacie Frank where we discussed those

1 projects.

2 Q. But you didn't -- you didn't send any  
3 question -- any written questions --

4 A. No.

5 Q. -- correct?

6 When you went to the data room, did you  
7 conduct any analysis of the new business blanket  
8 projects?

9 A. It was difficult to find in all the boxes  
10 that were contained there.

11 Q. Did you ask?

12 A. No, we were on our own there.

13 Q. Well, when you left, did you call ComEd and  
14 say, I need to look at the new business projects?

15 A. No.

16 Q. And at Page 33 of your -- of Mr. McMahan's  
17 testimony, he refers to underground facilities  
18 replacement.

19 Do you see that?

20 A. Yes.

21 Q. And in 2005 and 2006, ComEd corrected  
22 14,705 underground cable faults.

1                   Do you see that?

2       **A.**     I'm sorry.  What line are you on?

3       **Q.**     Line 693, 694.

4       **A.**     Yes.

5       **Q.**     And the total capital cost that ComEd

6 incurred in connection with underground facilities

7 replacement in '05 and '06 was 126 million?

8       **A.**     Yes.

9       **Q.**     Do you agree that some portion of this cost

10 is included in Accounts 366 and 367 that you

11 analyzed in this case?

12       **A.**     It's -- that's his testimony and then

13 there's the numbers in those accounts and it is not

14 clear what the correspondence (sic) is between --

15       **Q.**     I didn't ask you about the coor- -- I just

16 asked you if you -- if you have an understanding

17 that at least some of that 126 million is in one of

18 those -- or in those two FERC accounts, 366 and

19 367.

20       **A.**     It's certainly possible.

21       **Q.**     Wouldn't you expect that?

22       **A.**     Well, the only problem is I don't really

1 have any specific information here to demonstrate  
2 that it's -- what that money is directly connected  
3 to.

4 Q. Are you familiar the company Power Delivery  
5 Research and Consulting?

6 A. No.

7 Q. Otherwise known as PDR&C?

8 A. No.

9 Q. Did you read the testimony of Mr. Bill  
10 Donahue and Ron Williams in this case for ComEd?

11 A. If I did, it was early in the case and I  
12 don't remember.

13 Q. Do you recognize those names?

14 A. Yes.

15 Q. Who are they?

16 A. I just recognize the names. I don't know  
17 who they are.

18 MR. BERNET: May I approach?

19 JUDGE HAYNES: Yes.

20 JUDGE HILLIARD: Yes.

21

22

1 (Whereupon, ComEd Cross  
2 Exhibit No. 17 was  
3 marked for identification  
4 as of this date.)

5 BY MR. BERNET:

6 Q. I'm going to hand you, Mr. Lazare, another  
7 data request response which now has been marked as  
8 ComEd Cross Exhibit 17.

9 Do you recognize that response?

10 A. This is -- I did not read this beforehand;  
11 so, no.

12 Q. You didn't read it before when?

13 A. Before you just handed it to me.

14 Q. Okay. For the record, this is a Request  
15 No. JMO 210 dated November 19, 2007. Do you know  
16 who JMO is?

17 Is that Mr. Ostrander?

18 A. Yes.

19 Q. Staff witness in this case?

20 A. Yes.

21 Q. Let me see if I can refresh your  
22 recollection. I just have one copy of this.



1                   That's a copy of an e-mail dated  
2   December 10, 2007, which shows that you received  
3   that data request response on December 10th. Does  
4   that refresh your recollection?

5       **A.**   Well, I received it, but I didn't look at  
6   it.

7       **Q.**   Okay. You never looked at it?

8       **A.**   No.

9       **Q.**   And that data request response refers to 11  
10   reports prepared by Power Delivery Research and  
11   Consulting Corp.

12                   You see that?

13       **A.**   Yes.

14       **Q.**   Does that refresh your recollection about  
15   who PDR&C is?

16       **A.**   I wasn't familiar with PDR&C beforehand.  
17   So --

18       **Q.**   Before you got this?

19       **A.**   -- there's no recollection to refresh.

20                   Yes.

21       MR. BERNET: I'm sorry. Can you read that back?

22                   (Record read as requested.)

1 JUDGE HILLIARD: He's not familiar with the  
2 term.

3 MR. BERNET: Oh. Thank you.

4 BY MR. BERNET:

5 Q. And so, Mr. Lazare, if you look at the data  
6 request responses -- I mean, if you look at the  
7 reports referenced in that response, let me direct  
8 you to the third document -- or I'm sorry, the  
9 first document.

10 It says, The Power Delivery Research and  
11 Consulting Corp's capital project evaluations for  
12 the above-listed projects are included as  
13 attachments and are labeled as follows, and the  
14 first one's called, Install New Services For  
15 Residential Customers.

16 Do you see that?

17 A. Yes.

18 Q. Did you ever look at that report?

19 A. No.

20 Q. And directing your attention to the third  
21 document there, it says, Emergency Replacement of  
22 Underground -- Electrical Underground Equipment.

1 Do you see that?

2 A. Yes.

3 Q. Did you ever review that report?

4 A. No.

5 JUDGE HILLIARD: Ever review any of them?

6 THE WITNESS: No.

7 BY MR. BERNET:

8 Q. Would you accept, subject to check,

9 Mr. Lazare, that these -- these PDR&C reports were

10 in the data room in Springfield when you were

11 there?

12 A. I have no reason to think that they

13 weren't.

14 JUDGE HILLIARD: You know, I think we've gotten

15 the point that Mr. Lazare's preparation for the

16 case did not include reviewing all these documents

17 and that is what he did, was he made a calculation

18 based upon averages that were, you know, presented

19 to him number that ComEd gave him.

20 If that's where we're going with this, I

21 think you've established that.

22 BY MR. BERNET:

1       **Q.**     Switching topics, Mr. Lazare, one of the --  
2     one of the issues that you raised in your testimony  
3     is that ComEd didn't provide to you capitalized  
4     labor information with respect to these three  
5     accounts, right?

6       **A.**     Yes.

7       **Q.**     And by the "three accounts," I'm referring  
8     to 366, 367 and 369. You know what I mean?

9       **A.**     Yes.

10      **Q.**     And you recognize those references to be  
11     references to account numbers under the Uniform  
12     System of Accounts, right?

13      **A.**     Yes.

14      **Q.**     And you also have an understanding, do you  
15     not, that ComEd is required to report its plant  
16     addition costs in accordance with the Uniform  
17     System of Accounts, right?

18      **A.**     Yes.

19      **Q.**     Do you have any reason to believe, as you  
20     sit here today, that ComEd did not comply with the  
21     Uniform System of Accounts with respect to  
22     reporting on those three accounts in 2005 and 2006?

1       **A.**     I'm not clear -- when you say did not  
2 conform to, I'm not clear what you're asking.

3       **Q.**     I'll ask it again.

4               There's -- there's a requirement in the  
5 Uniform System of Accounts that describes what  
6 needs to be reported in each of those accounts,  
7 right?

8       **A.**     Yes.

9       **Q.**     And my question is, do you have any reason  
10 to believe ComEd failed to comply with those  
11 requirements with respect to its reporting in those  
12 three accounts for 2005 and 2006?

13       **A.**     No, I don't have any information to  
14 demonstrate that.

15       **Q.**     And the Uniform System of Accounts does not  
16 require ComEd to separately identify capitalized  
17 labor in those accounts, does it?

18       **A.**     No.

19       **Q.**     Public Utility Act doesn't require ComEd to  
20 report its capitalized labor costs in those  
21 accounts either, does it?

22       **A.**     Not specifically.

1       **Q.**     And there's no ICC rule or order that  
2     requires ComEd to report its capitalized labor  
3     costs in those accounts, right?

4       **A.**     Nothing that names that specifically, no.

5       **Q.**     To your knowledge, has the ICC accounting  
6     staff suggested that ComEd or any other Illinois  
7     utility maintain capitalized labor information in  
8     its general ledger system?

9       **A.**     I don't know if that specific request has  
10    been made.

11      **Q.**     Mr. Griffin -- I think you testified before  
12    that Mr. Griffin was a staff witness responsible  
13    for evaluating a portion of ComEd's rate base that  
14    ComEd seeks to include in this case, right?

15      **A.**     Yes.

16      **Q.**     And that includes plant -- and so he was  
17    responsible for 2007 and the first three quarters  
18    of 2008?

19      **A.**     That's my understanding.

20      **Q.**     And would you accept, subject to check,  
21    that ComEd placed into Account 366 in 2007 \$15.8  
22    million in its FERC Form 1?

1       **A.**     I would accept, subject to check.

2       **Q.**     And would you accept, subject to check,  
3     that in 2007, ComEd placed \$242 million of plant in  
4     service in Account 367?

5       **A.**     Yes.

6       **Q.**     And would you accept, subject to check,  
7     that ComEd placed \$99 million into service in  
8     connection with Account 369?

9       **A.**     Yes.

10      **Q.**     And Mr. Griffin hasn't proposed any  
11     disallowances in those three accounts for the year  
12     2007, has he?

13      MR. FOSCO:   I'm going to object as beyond the  
14     scope of this witness's testimony what Mr. Griffin  
15     did or didn't do.

16      JUDGE HILLIARD:   Sustained.

17      MR. BERNET:   We on 18?

18                   May I approach?

19      JUDGE HILLIARD:   Yes.

20

21

22

1 (Whereupon, ComEd Cross  
2 Exhibit No. 18 was  
3 marked for identification  
4 as of this date.)

5 BY MR. BERNET:

6 Q. I'm handing you, Mr. Lazare, a document  
7 called Hypothetical Calculation Costs, which has  
8 now been marked as cross -- ComEd Cross Exhibit 18.  
9 I thought I'd try to cut the questions short by  
10 putting this on a piece of paper.

11 And so on this document, Mr. Lazare,  
12 it's called Hypothetical Calculation of Costs, and  
13 what it identifies is cable and duct by miles in  
14 2005 and cable and duct by miles and investment in  
15 2006.

16 Do you see that?

17 A. Yes.

18 Q. And if you assume that in 2006, the Company  
19 replaced 500 miles of preexisting cable and added  
20 200 miles of new cable, the calculation of the  
21 increase in unit costs per mile is what is set  
22 forth on that document?



1       **A.**     Yes.

2       **Q.**     Mr. Lazare, you have no evidence that any  
3     component of ComEd's nonmaterial costs were  
4     unreasonable, do you?

5       **A.**     No.

6       **Q.**     And you have no document or other evidence  
7     to show that ComEd could have purchased any  
8     component of underground lines at a cost lesser  
9     than what it actually paid, right?

10      **A.**     That's correct.

11      **Q.**     And you have no document or other evidence  
12     to show that ComEd could have purchased any  
13     component of new services at a lesser cost than  
14     what ComEd actually paid?

15      **A.**     That's correct.

16      **Q.**     And you have not identified a single piece  
17     of equipment that ComEd could have acquired at a  
18     lower price from any source in the world at a lower  
19     cost than it actually paid?

20      **A.**     That's correct.

21      **Q.**     And you're not aware of any engineering  
22     technique or process that ComEd could have used

1 that would have resulted in the installation of  
2 underground cable or new services at a lower cost  
3 in 2005 or 2006 than ComEd actually incurred?

4 A. That's correct.

5 Q. And you're not aware of any management  
6 technique or process that ComEd could have used  
7 that would have resulted in the installation of  
8 underground cable or new services at a lower cost  
9 in 2005 and 2006 than ComEd actually incurred?

10 A. That's correct.

11 Q. And you have no evidence that any component  
12 of ComEd's nonmaterial costs were unreasonable?

13 A. That's correct.

14 Q. And you have no evidence that any component  
15 of ComEd's nonmaterial costs were imprudently  
16 incurred?

17 A. That's correct.

18 Q. And your analysis of ComEd's proposed  
19 adjust- -- your analysis of the proposed adjustment  
20 in this case of \$110 million took you eight hours  
21 to prepare, right?

22 A. The spreadsheet took eight hours.

1       MR. BERNET:  Nothing further.

2                   I'd like to move for admission of all my

3 cross exhibits.

4       JUDGE HILLIARD:  I don't think you've

5 established that he knew anything about Exhibit 17

6 or that he's seen it before or --

7       MR. BERNET:  Well --

8       JUDGE HILLIARD:  Is that the point?

9       MR. BERNET:  Well, you know, I think -- one of

10 the fundamental points that Mr. Lazare makes is

11 ComEd's costs were unexplained, and I think what

12 that document does is it impeaches that analysis.

13       JUDGE HILLIARD:  Well, I think it is -- that

14 addressed reports that he acknowledges that he

15 hadn't read it.  So for that purpose, we'll let it

16 in.

17       MR. FOSCO:  Your Honor, if we could hold off on

18 these until we do redirect.

19       JUDGE HILLIARD:  Okay.  Fine.

20       MR. FOSCO:  If we can have just a minute.

21       JUDGE HILLIARD:  Sure.

22                   (Change of reporters.)

1 REDIRECT EXAMINATION

2 BY

3 MR. FOSCO:

4 Q. Mr. Lazare, Mr. Bernet asked you some  
5 questions about your exhibit looking at unit cost?

6 A. Yes.

7 Q. Can you explain for the ALJs the analysis  
8 that you went through to get to that point of where  
9 you prepared your Schedule 5.1.

10 A. Yes, I had asked a series of data requests  
11 for plant additions and assets trying to originally  
12 get a sense about -- over trend lines; over time in  
13 terms of costs; in terms of numbers of assets that  
14 were installed; in terms of labor costs, to see if  
15 productivity had been changing over time. And --  
16 so I started out with a broader based analysis just  
17 to see what I would -- results I would achieve  
18 based upon looking at all those different factors.

19 And then over time, I narrowed by  
20 analysis to this issue of plant additions as I  
21 presented in my testimony.

22 Q. Okay. And, Mr. Lazare, did you

1 specifically ask for data for the periods of time  
2 that are in your Schedule 5.1?

3       **A.**     Yes.   And I asked for data for the years  
4 2000 through 2006 and for each of these different  
5 factors.   I didn't -- I sought to get a broad range  
6 of data.   I didn't want to get a more narrow set.  
7 So...

8               I thought that period of time would be a  
9 useful period over which to assess these trends.  
10 And it was just a judgment call in terms of the  
11 starting point of 2000.

12       **Q.**     Okay.   In your opinion, is it reasonable to  
13 use the years that you did?   And if so, why?

14       **A.**     Yes, I think in an analysis of this kind I  
15 think it's important that you use as broad a range  
16 of data as possible because data for an individual  
17 year may be atypical.   And so that if you -- let's  
18 say use two years, for example, and one of the  
19 years had anomalous data, that could skew the base  
20 upon which I felt my adjustment on.

21               So my feeling was it would be best to  
22 use all of the data that I requested in my data

1 request in order to develop my adjustment.

2 Q. Did you massage any data? Did you  
3 manipulate it in any way in terms of changing the  
4 numbers that you received from the Company?

5 A. No, I used all data for those three  
6 accounts that I received from the Company.

7 Q. And you continue to believe that your  
8 analysis is correct?

9 A. Yes. I think that in this case a broader  
10 range is preferable to a shorter period in order to  
11 prevent any one atypical year from skewing the  
12 results.

13 Q. Mr. Bernet also asked you some questions  
14 about certain parts of Mr. McMahan's testimony  
15 about services. Do you recall that?

16 A. Yes.

17 Q. And do you recall that he asked you some  
18 questions about the amounts for services and how  
19 they relate to FERC Accounts 366 -- well, it may  
20 have been about 369, -- but the various FERC  
21 accounts. Do you recall that?

22 A. Yes.

1       **Q.**     And what is the relationship between the  
2     numbers that Mr. Bernet was asking you about,  
3     services, and Mr. McMahan's testimony in the  
4     amounts in the FERC accounts that you were looking  
5     at?

6       **A.**     Well, if you look at the testimony that  
7     Mr. Bernet referred me to, Page 32, Line 678 and  
8     679, it indicates that the Company spent  
9     approximately \$295 million to provide services to  
10    new residential customers and new commercial  
11    customers. Now, if you look at my schedule, you'll  
12    see that the total amount that the Company requests  
13    for services for those two years is approximately  
14    \$126 million.

15               So this is essentially an apples and  
16    orange comparison. And one of the issues is that  
17    the Company figure includes not just Account 369  
18    services but it includes related plant that is  
19    factored into its calculation. So it's a far  
20    larger figure because it's not just that specific  
21    account. It's other accounts that are also  
22    included in the totals. So I don't think it's a

1 comparable number upon which to assess my  
2 adjustments.

3 Q. Mr. Bernet asked you if you had any  
4 evidence of unreasonable increases in certain  
5 costs. Do you recall that?

6 A. Yes.

7 Q. Has the Company presented evidence that  
8 satisfied you that the costs were reasonable?

9 A. No, it did the not.

10 MR. BERNET: Sorry. I'm going to object. What  
11 are you referring to specifically? I didn't ask  
12 him generally. I asked him a lot of questions  
13 about unreasonable costs specifically.

14 BY MR. FOSCO:

15 Q. Well, let's do it -- I believe he asked you  
16 about services. We'll go through the it -- the two  
17 items.

18 I believe he asked you if you had any  
19 evidence that cost of services was unreasonable or  
20 that the Company installed those at a cost that was  
21 more. Do you recall that?

22 A. Yes.



1       **Q.**     And my question to you is with respect to  
2     services, did the Company present evidence that  
3     established, based on your analysis, that those  
4     costs were reasonable?

5       **A.**     No, it did not.   And when I presented my  
6     adjustment I indicated directly that if the Company  
7     was able in further analysis of the case -- if  
8     Mr. Williams was able to show that those plant  
9     additions for 2005 and 2006 were reasonable, then I  
10    would reconsider my adjustment.   But he never  
11    provided any -- in my estimation -- any reasonable  
12    costs support for those accounts.   And, therefore,  
13    I think my adjustment is the only reasonable  
14    alternative in the -- given the lack of support by  
15    the Company for its proposed additions.

16       **Q.**     Same question for underground lines.

17               Mr. Bernet asked you some questions if  
18    you had any evidence that the cost of what it paid  
19    for any of those items were unreasonable.   And I  
20    believe he also asked you if you had any evidence  
21    that the Company could have paid less than it did.  
22    Do you recall those questions?

1       **A.**     Yes.

2       **Q.**     Did the Company present information that  
3     established, in your opinion, that the cost that  
4     it's seeking to recover in this proceeding for  
5     those items was reasonable?

6       **A.**     No, it did not.  It presented some cost  
7     data that was noncomparable that was cumulative  
8     rather than reflective of additions and did not  
9     present any further support for its underground  
10    lines additions for 2005 or 2006.

11                   And, again, I had also stated that if  
12    they did provide that additional information, I  
13    would reconsider my adjustment, but it wasn't  
14    provided.

15       **MR. FOSCO:**  Your Honor, you have no further  
16    questions.  And we don't object to any of the  
17    cross-exhibits coming in.

18       **JUDGE HAYNES:**  Recross?

19       **MR. BERNET:**  No recross.

20       **JUDGE HILLIARD:**  Thank you.

21       **MR. BERNET:**  So, Carmen, just we're clear, it's  
22    Exhibits 13, 14, 15, 16, 17 and 18?

1 MR. FOSCO: Yes, but we --

2 JUDGE HILLIARD: All right.

3 JUDGE HAYNES: Okay. ComEd Cross-Exhibits 13  
4 through 18 are admitted.

5 (Whereupon, ComEd Cross-Exhibit  
6 Nos. 13-18 were admitted into  
7 evidence.)

8 (Witness sworn.)

9 ROBERT K. McDONALD,  
10 called as a witness herein, having been first duly  
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY

14 MS. O'BRIEN:

15 Q. Mr. McDonald, would you state your name for  
16 the record.

17 A. Robert K. McDonald.

18 Q. And what is your position?

19 A. I am a senior vice president and chief  
20 financial office for Commonwealth Edison.

21 Q. I have put before you three documents. The  
22 first one has been designated as ComEd Exhibit 9,

1 and it's entitled the Direct Testimony of Robert K.  
2 McDonald. It has attached to it its Exhibits 9.1  
3 through 9.13, inclusive. The second document is  
4 entitled the Rebuttal Testimony of Robert K.  
5 McDonald. This was designated as ComEd Exhibit 28  
6 and has attached to it Exhibits 28.01 through  
7 28.05. And the third document designated as ComEd  
8 Exhibit 41.

9                   If I were to ask you the questions  
10 contained in these documents today, would your  
11 answers be the same?

12       **A.**     Yes.

13       **Q.**     Were these documents prepared by you or  
14 under your direction and control?

15       **A.**     Yes, they were.

16       MS. POLEK-O'BRIEN: ComEd moves for admission of  
17 Exhibit 9.0, 9.1 through 9.13, 28, 28.01 through  
18 28.05 and Exhibit 41.

19       JUDGE HAYNES: Objections?

20       MS. LUSSON: No objection.

21       MS. POLEK-O'BRIEN: The witness is available for  
22 cross-examination.

1 MS. LUSSON: Good afternoon, Mr. McDonald.

2 JUDGE HILLIARD: Let me just say for the record  
3 that the exhibits are admitted.

4 (Whereupon, ComEd Exhibit  
5 Nos. 9.0, 9.1-9.13, 28,  
6 28.01-28.05 & 41 were  
7 admitted into evidence.)

8 JUDGE HILLIARD: Go ahead.

9 MS. LUSSON: Let me enter my appearance for the  
10 record. My name is Karen Lusson. I'm from the  
11 Attorney General's Office, 100 West Randolph  
12 Chicago, Illinois 60601, on behalf of the People of  
13 State of Illinois.

14 CROSS-EXAMINATION

15 BY

16 MS. LUSSON:

17 Q. Mr. McDonald, if you could turn your -- to  
18 Page 14 of your direct testimony. At Line 285 you  
19 indicate that ComEd has a capital budget approval  
20 process that we use to evaluate the quantitative  
21 and qualitative merits of projects. Do you see  
22 that?

1       **A.**     Yes, I do.

2       **Q.**     And by "quantitative" I assume you mean  
3 from a financial perspective; is that correct?

4       **A.**     That's correct.

5       **Q.**     Is it fair to say that the existing capital  
6 budget process is used to ensure that the projects  
7 selected are cost effective and affordable from  
8 ComEd's perspective?

9       **A.**     The process is used to assess whether  
10 projects that we believe need to be put into  
11 service to meet planning criteria, public  
12 relocation, other needs, are being done at the  
13 least cost. And we look at various alternatives  
14 for those capital projects.

15       **Q.**     And from -- and when you use the word  
16 "qualitative," is it fair to say that you mean that  
17 the capital budget process is used to ensure that  
18 the capital budget projects are prioritized in  
19 accordance with the short and long term goals of  
20 the Company in terms of investment?

21       **A.**     From both a quantitative and qualitative  
22 point of we try to prioritize projects where we

1 can. But as I mentioned in the previous answer,  
2 there are a number of projects that we do meet  
3 planning criteria or do meet new customer requests  
4 that really aren't at our discretion.

5 Q. Okay. And those are ones that come up  
6 unexpectedly, is that what you're saying, or as the  
7 regular part of the process?

8 A. They come up as a regular course of  
9 business. New business customers, we don't know  
10 when they're going to put in their request to be  
11 hooked up, and we have to accommodate them within  
12 the course of business.

13 Q. Just a couple other questions. I did have  
14 a series of questions I was going to ask you about  
15 the proposal on the earnings test with respect to  
16 Rider SMP, but it's my understanding that Witness  
17 Houtsma will be available to answer those  
18 questions. So the good news is my cross is  
19 considerably shorter.

20 Mr. McDonald, have you presented any  
21 calculations or exhibits anywhere in your testimony  
22 to show what rate of return or earnings the Company

1 will achieve in 2009, 2010 or thereafter upon  
2 completion of this rate case?

3       **A.**     We have presented numbers in -- I think the  
4 direct -- or rebuttal testimony regarding impact of  
5 the Staff's position. I don't think in testimony  
6 we have presented numbers regarding return on  
7 equity for the outcome of this case largely because  
8 all we could do is base that on what we can have  
9 filed. We obviously won't know the outcome till  
10 we're done.

11       **Q.**     Have you sponsored any study of earnings  
12 attrition to quantify whether a rate increase from  
13 this case will need to be followed up with another  
14 immediate rate case?

15       **A.**     We do expect that recovery for ComEd's  
16 financial position will take a number of years. In  
17 fact, that is what we have talked about to the  
18 financial community, to the rating agencies, that  
19 this is not a one rate case effort. That it is  
20 going to take multiple rate cases to get back to  
21 more or less an industry standard return on equity.

22       **Q.**     But in terms of this case, do you have any



1 sort of study that looks at that -- the status of  
2 earnings attrition from the Company's perspective  
3 as to whether or not as -- rather not whether or  
4 not but how frequent or when the next rate case  
5 will need to occur?

6       **A.** We have not. Certainly we have longer  
7 range studies that look at financial outcomes for  
8 the Company. They will change depending on the  
9 outcome of -- excuse me, on the outcome of this  
10 case. Certainly there will be additional rate  
11 cases, that's the nature of the utility business.

12               The exact timing of when the next rate  
13 case would come or what the nature of that rate  
14 case would be, we are still working out what that's  
15 going to look like. And that will depend, to a  
16 certain extent, on the outcome of this case.

17       **Q.** So there's nothing you can point to in this  
18 record that says when that would happen, the next  
19 rate case?

20       **A.** In terms of when that would happen? No, we  
21 have provided, as I said, numbers in here based on  
22 the Staff's position. I think in various data

1 request responses there have been requests for more  
2 forward looking numbers. We have provided those.  
3 Assuming we got everything we asked for in this but  
4 then not having another rate case, and those do  
5 show that the return on equity do deteriorate.

6 Q. If the Company got what the revenue  
7 requirement amount that -- for example, was agreed  
8 to in the stipulation, does the Company have any  
9 attrition study in this case that shows when its  
10 next rate case would be?

11 MS. POLEK-O'BRIEN: Objection. The stipulation  
12 doesn't stipulate to a particular revenue  
13 requirement. It refers to an agreement between  
14 ComEd and Staff with respect to a variety of  
15 issues. It leaves remaining, even as to between  
16 ComEd and Staff, still a number of issues. So it's  
17 not clear what revenue requirements Miss Lusson is  
18 referring to.

19 MS. LUSSON: Well, I understand there are still  
20 some outstanding issues that remain outside of the  
21 stipulation between the Company and Staff in terms  
22 of the final revenue requirement. I think the

1 stipulation puts it at 269 from Staff's  
2 perspective. And the Company's still above 300  
3 million.

4 BY MS. LUSSON:

5 Q. But my question, Mr. McDonald, was, is  
6 there anything in the record that says when the  
7 Company would file a next rate case if the  
8 Commission granted a revenue requirement consistent  
9 with the stipulation?

10 MR. FOSCO: Your Honor, on behalf of Staff, I  
11 guess I have to object, too. I think Staff does  
12 have a rebuttal revenue requirement set forth in  
13 the testimony of Staff Witness Hatthorn. But there  
14 is no revenue requirement set forth in the  
15 stipulation.

16 MS. LUSSON: I'll rephrase the question.

17 BY MS. LUSSON:

18 Q. Does the Company have any attrition studies  
19 in this record or any kind of document or estimate  
20 or statement as to when a next case would be filed  
21 if Staff's proposed revenue requirement is granted?

22 A. In this record I do not believe that there

1 is a determination of the timing of the next rate  
2 cased based on the stipulation.

3 MS. LUSSON: Your Honor, during Ms. Munsch's  
4 cross of Mr. Donnelly a question was deferred to  
5 this witness. So if you would indulge us on this,  
6 Ms. Munsch had a couple questions she had to ask  
7 Mr. McDonald on those issues.

8 JUDGE HILLIARD: Are you through?

9 MS. LUSSON: Thank you, Mr. McDonald. I'm  
10 through.

11 JUDGE HILLIARD: All right. Fine.

12 MS. MUNSCH: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY

15 MS. MUNSCH:

16 Q. Good afternoon, Mr. McDonald. My name's  
17 Kristin Munsch on behalf of the People also.

18 Earlier in the week I had ask ComEd  
19 witness Mr. Donnelly about factors that could cause  
20 a variance in the projected plant addition, the  
21 capital addition. And I was following up with him  
22 on a data request response that was provided. And

1 as Miss Lusson explained, we were informed by your  
2 counsel that you might be the appropriate person --

3 A. Okay.

4 Q. -- to answer that.

5 I'm going to show you if I can what was  
6 previously marked as AG Cross-Exhibit 9, I believe.

7 MS. MUNSCH: May I approach?

8 JUDGE HILLIARD: Yes.

9 BY MS. MUNSCH:

10 Q. And are you familiar with this discovery  
11 request?

12 A. Yes, I am.

13 Q. Okay. And then in this response the  
14 Company states that ComEd doesn't typically finance  
15 individual plant additions; is that correct?

16 A. That is correct.

17 Q. And then it is not possible to show what  
18 the AG had requested there, which was a sources and  
19 uses of funds for the specific amounts of projected  
20 jurisdictional plant additions for the first three  
21 quarters of 2008; is that correct?

22 A. That is correct.

1       **Q.**     And is that still the Company's position  
2 today?

3       **A.**     That is correct. We do not do project  
4 financing.

5       MS. MUNSCH: Thank you, Mr. McDonald.

6               No further questions.

7               At the time I would ask that AG  
8 Cross-Exhibit 9 be admitted into evidence.

9       JUDGE HILLIARD: It wasn't previously?

10      MS. MUNSCH: No we held it waiting, pending the  
11 correct witness to respond.

12      JUDGE HILLIARD: Okay.

13      MS. POLEK-O'BRIEN: No, objection.

14      JUDGE HILLIARD: Maybe we do need three copies  
15 for the reporter because I'm not sure what happened  
16 to the one that was --

17      JUDGE HAYNES: I don't think we do.

18      JUDGE HILLIARD: Okay. All right.

19               Thank you.

20               Who's the next questioner?

21      MR. FEELEY: I can go next.

22

1 CROSS-EXAMINATION

2 BY

3 MR. FEELEY:

4 Q. Good afternoon, Mr. McDonald. My name is  
5 John Feeley and I represent the Staff.

6 JUDGE HILLIARD: By the way, AG Cross-Exhibit 9  
7 will be admitted.

8 (Whereupon, AG Cross-Exhibit  
9 No. 9 was admitted into  
10 evidence.)

11 JUDGE HILLIARD: Go ahead.

12 BY MR. FEELEY:

13 Q. A couple questions for you on annual plant  
14 additions in the future.

15 Does ComEd have an internal audit staff  
16 that is capable of conducting annual internal  
17 audits of the Company's additions in service?

18 A. I think they certainly believe so. It  
19 would depend a little bit on the scope of what  
20 we're looking for and whether -- you know, whether  
21 it needs to be annual or longer term. But, yes, we  
22 do have an internal audit staff that is fully

1 capable of reviewing plant and service additions.

2 Q. Okay. And would ComEd be willing to work  
3 with the Commission Staff to prepare an audit scope  
4 that can be used by the Company's internal auditors  
5 to conduct annual internal audits of the Company's  
6 additions to plant and service?

7 A. We are certainly willing to work with Staff  
8 and talk about the nature and scope of such an  
9 audit, what we would be looking for, what the  
10 porosity of it would have to be, and certainly  
11 willing to work with Staff on what that might look  
12 like.

13 Q. All right. In both your rebuttal and your  
14 surrebuttal testimony -- in your rebuttal, I guess  
15 you could go to that, Page 25. And it's Lines 544  
16 to 546.

17 A. Yes.

18 Q. All right. Make the statement that -- this  
19 is in regards to SMP projects, that ComEd is likely  
20 to undertake these investments only if the  
21 financial health improves and it has greater  
22 assurance of cost recovery through this SMP Rider.



1                   Hypothetically if ComEd got the SMP  
2 Rider and if it got the revenue requirement it was  
3 looking for, do you know when ComEd would expect to  
4 make the SMP project investments?

5       **A.**     No, I don't know exactly when we would  
6 start. I think we would want to start  
7 expeditiously. We do think there are benefits to  
8 be gained for customers. And the sooner we can  
9 start, the better off we would be, if that's what  
10 you're -- you're asking, we get the rider and  
11 there's a process that approves all the projects,  
12 when we would start? I think we would start as  
13 soon as we have approval that we have the right  
14 projects and the rider in place.

15       **Q.**     At what -- and your testimony also talk  
16 about the financial health improving. So  
17 hypothetically if you got your revenue requirement  
18 then that would give you the financial health that  
19 you're looking for and you would be able to go  
20 forward with the projects then?

21       **A.**     Yes. I mean the presumption, as I stated  
22 throughout the testimony regarding the SMP

1 projects, we have to be in a more financially  
2 stable position than we are today, otherwise we  
3 couldn't even participate in the rider projects.

4           We have filed a revenue requirement in  
5 this case which we believe puts us on the right  
6 path to financial health and recovery. It doesn't  
7 get us all the way there, but it would get us far  
8 enough down the road that we could undertake these  
9 projects as long as we had the rider.

10       **Q.** Give you a different hypothetical, suppose  
11 the Commission doesn't give you the revenue  
12 requirement that you're looking for but the one  
13 that Staff is proposing, would that put you at the  
14 same point as yours and be able to proceed with the  
15 projects in the same time frame as what the  
16 Company's?

17       **A.** I mean, it's hard to say at this point. It  
18 would be part of -- what we're looking for is what  
19 the credit rating agency reaction and the financial  
20 community reaction would be to any result to any  
21 order.

22           So I think what the Staff has suggested

1 in their rebuttal testimony is certainly a very  
2 good step in the distribution towards financial  
3 health. I can't say for sure at this point in time  
4 whether if we ended up at revenue requirement of  
5 269 versus the 314 that reflects the other  
6 potential adjustments, whether that is enough of a  
7 difference to alter the timing.

8 Q. I direct your attention to your  
9 surrebuttal, Page 6, and looking at Lines 125 to  
10 132.

11 A. Yes.

12 Q. Now, is it your position that the criteria  
13 set forth in a prior order should be observed in  
14 subsequent cases?

15 A. Yes.

16 Q. Okay. Is it also your position then that  
17 if a party --

18 A. I'm sorry, if I may correct -- I mean,  
19 obviously, there's an appeal process. And that  
20 could have a -- that could force a change down the  
21 road. But once a Commission decision is made the  
22 Company relies on that in terms of changing,

1 altering the way it does its business. That's what  
2 happened with the incentive plan. We changed it  
3 based on the last Commission order. And in that  
4 case, yes, I would say that that should stand going  
5 forward.

6 Q. Is it also your position then that if a  
7 party made an argument which the Commission did not  
8 rely upon in its order in reaching a conclusion in  
9 a prior case, that the same argument should not be  
10 considered in a subsequent case by the Commission?

11 A. I can't answer that. I would imagine the  
12 Commission, if they felt that there was a different  
13 position that they would like to adopt, would so  
14 indicate in the order.

15 Q. No. But I'm asking you is that your  
16 position? Is it your position that if a party made  
17 an argument in a prior case but the Commission  
18 didn't rely upon it in reaching a conclusion,  
19 should the Commission then in a subsequent case not  
20 rely upon that same argument as well? Is that  
21 your position?

22 A. I'm sorry. It's a bit of a tough question

1 to follow.

2           If what you're asking based on the way  
3 the Commission writes its order, whether we will  
4 follow that and assume that that's the way it's  
5 going to occur down the road, the answer is yes.

6       **Q.**    So if the Commission didn't rely upon an  
7 argument made by a party and reached a conclusion  
8 then the Commission -- is it then your position  
9 that the Commission in the subsequent case should  
10 not rely upon that argument that is it previously  
11 didn't give any weight to?

12       **A.**    I'm not a regulatory lawyer, but if the  
13 Commission order --

14       **Q.**    I'm not -- I'm just asking if that's your  
15 position. Because you have the position that if  
16 the criteria was set forth in a prior case, it  
17 should be followed in a subsequent case. Now, I'm  
18 asking you, say a party made an argument in a prior  
19 case, the Commission didn't consider it, they did  
20 not rely upon it in reaching their conclusion,  
21 should -- is it your position then that the  
22 Commission in a subsequent case should also not

1    rely upon that argument, but that gave no weight to  
2    it previously?

3       **A.**    As a hypothetical, you know, unless --

4       **Q.**    Yes.

5       **A.**    -- something significant has changed, then  
6    yes.

7       MR. FEELEY:   Can I approach the witness?

8       JUDGE HAYNES:   Yes.

9       JUDGE HILLIARD:   Please.

10    BY MR. FEELEY:

11       **Q.**    I'm going to hand you what I've marked as  
12    Staff Cross-Exhibit No. 6.  I'm going to have the  
13    court reporter marked for identification Staff  
14    Cross-Exhibit No. 6.  It's a multipage document.  
15    Cover page indicates that there -- your work papers  
16    for incentive compensation for Exhibit 41.0.  Could  
17    you take a second to review those.  Do those look  
18    like your work papers that were provided for your  
19    Exhibit 41.0?

20       **A.**    Yes.

21       **Q.**    In 2007, ComEd changed its incentive comp  
22    program, correct, the AIP?

1       **A.**     That is correct.

2       **Q.**     So in 2006, the AIP still contained a  
3     component based upon Exelon's earnings per share;  
4     correct?

5       **A.**     That is correct.

6       **Q.**     And then 2007 that component was  
7     eliminated?

8       **A.**     Correct.

9       **Q.**     Okay.  If you could look at Staff  
10    Cross-Exhibit No. 6, the first page after the cover  
11    page.  Over on the right side there's a column that  
12    says, Left to litigate.  Do you see that?

13      **A.**     Yes.

14      **Q.**     I'm going to ask about some of the figures  
15    that appear there, and tell me if you agree with  
16    this description of them.  Do you see the 88  
17    figure --

18      **A.**     Yes.

19      **Q.**     -- over in the box with the square around  
20    it?

21      **A.**     Yes, I do.

22      **Q.**     Does the 88 represent AIP pro forma and net

1 income?

2 A. It is the net income component of the

3 898 --

4 Q. And before we go any further, left to

5 litigate, this is -- these are the remaining

6 amounts in dispute between ComEd and Staff?

7 A. That is correct. That is correct.

8 Q. Okay. Now, see the 810 figure in that box?

9 A. Yes.

10 Q. Is that the AIP pro forma 50 percent total

11 cost expense amount?

12 A. Yes.

13 Q. All right. Do you see that 541 figure?

14 A. Yes.

15 Q. Is that the AIP historical net income?

16 A. That is the net income piece, right.

17 Q. And do you see the 333 figure?

18 A. Yes.

19 Q. All right. Is that the AIP historical net

20 income capital?

21 A. Yes.

22 Q. And do you see the 4999?



1       **A.**     Yes.

2       **Q.**     Is that the AIP historical 50 percent total  
3 cost expense?

4       **A.**     That is correct.

5       **Q.**     And do you see the 3018?

6       **A.**     Yes.

7       **Q.**     Is that the AIP historical 50 percent total  
8 cost capital?

9       **A.**     Yes.

10      **Q.**     I have two more here.  
11                    You see the 6741?

12      **A.**     Yes.

13      **Q.**     Is that the LTIP -- that's long term  
14 incentive plan?

15      **A.**     That is correct.

16      **Q.**     And is that the LTIP expense?

17      **A.**     Yes.

18      **Q.**     And finally the 1,022. Do you see that?

19      **A.**     Yes.

20      **Q.**     Is that the LTIP capital?

21      **A.**     Yes.

22      **MR. FEELEY:** Just one second, please.

1                   That's all I have. Thank you very much.

2                   At this time, I move to admit into  
3 evidence ICC Staff Cross-Exhibit No. 6, which are  
4 Mr. McDonald's incentive comp work papers for his  
5 Exhibit 41.0.

6           MS. POLEK-O'BRIEN: No objection.

7           JUDGE HILLIARD: Exhibit 6 will be admitted into  
8 the record.

9                               (Whereupon, Staff Cross-Exhibit  
10                              No. 6 was admitted into  
11                              evidence.)

12          JUDGE HILLIARD: Another questioner, please.

13                              CROSS-EXAMINATION

14                              BY

15                              MR REDDICK:

16          **Q.** Good afternoon, Mr. McDonald. My name is  
17 Conrad Reddick. I represent IIEC in this  
18 proceeding.

19                    Could you turn first to your  
20 Exhibit 28.01. Are you there?

21          **A.** Yes.

22          **Q.** On this exhibit you have offered the

1 development of certain credit metrics based on  
2 Staff's pro forma proposed cost of service in this  
3 case and on ComEd's estimated -- an estimated 2009  
4 forecast from ComEd; is that correct?

5       **A.**     That is correct.

6       **Q.**     And referring to Schedule 1.2 of that  
7 Exhibit 28.01 --

8       **A.**     Yes.

9       **Q.**     -- on that page, you compare various  
10 financial data derived from Staff's proposed text  
11 year figures in Column B to ComEd's estimate of the  
12 corresponding 2009 data in Column C; is that  
13 correct?

14       **A.**     That is correct. Again, based on the  
15 revenue established by Staff's position.

16       **Q.**     Yes.

17               And ComEd is using a 2006 test year in  
18 this case; correct?

19       **A.**     That is correct.

20       **Q.**     And does the testimony of Staff or any  
21 intervenor indicate to you that this nontest year  
22 forecast data was investigated in detail to assess

1 the validity of ComEd's forecast assumptions?

2       **A.**    No, I don't have evidence that it was  
3 tested for forecast assumptions.

4       **Q.**    Do you believe that the credit metric shown  
5 on your exhibit for 2009 should be a factor in the  
6 Commission's determination of rates in this case?

7       **A.**    I think the financial health of the utility  
8 should be a consideration in this case.  Is what  
9 you're trying to establish, are rates -- when upon  
10 being put into service provide reasonable cost --

11       **Q.**    I'm sorry.  I'm having trouble hearing you.

12       **A.**    I'm sorry.  The answer was yes, I do  
13 believe that the financial health of the utility  
14 should be a consideration.

15       **Q.**    The 2009 metrics you present in this  
16 exhibit?

17       **A.**    Yes.

18       **Q.**    Are you recommending that the Commission  
19 adopt rates above the cost of service proved in  
20 this case to improve ComEd's credit metric?

21       **A.**    No.

22       **Q.**    Okay.  Would you agree with me that a test

1 year that included most of 2009 would better match  
2 forecast data shown on its exhibit with the cost  
3 used for setting rates in this case?

4 **A.** I would agree that a -- the ability to use  
5 a 2009 test year would better match the 2009 costs.

6 **MR. REDDICK:** I have one exhibit. May approach,  
7 your Honor?

8 I have marked as IIEC Cross-Exhibit 4.

9 (Whereupon, IIEC  
10 Cross-Exhibit No. 4 was  
11 marked for identification.)

12 **BY MR. REDDICK:**

13 **Q.** Mr. McDonald, do you recognize these data  
14 questions?

15 **A.** I do.

16 **Q.** I have handed the witness a package of data  
17 requests, ComEd's responses to IIEC Data Request  
18 No. 11.01; 11.02, with a two-page attachment;  
19 11.03; 11.04; and 11.05.

20 Mr. McDonald, each of these refers to  
21 your testimony, does it not?

22 **A.** Yes.

1       **Q.**     And these responses were prepared by you or  
2 under your direction?

3       **A.**     That is correct.

4       **Q.**     Okay. I think we can save everybody some  
5 time on Friday afternoon with this exhibit. But  
6 before we close out the exhibit, I do want to  
7 clarify two of them. Could you take at a look at  
8 11.01.

9       **A.**     Yes.

10      **Q.**     And in this response you state that the net  
11 income depreciation and amortization amounts on  
12 Schedule 1.2 -- I'm sorry, 1.3 -- include, quote,  
13 the impact of other costs not recoverable through  
14 distribution and transmission rates, end quote.  
15 What are those costs?

16      **A.**     What we were showing here was -- on the one  
17 hand, you can look at just the distribution net  
18 income, and the ROE for the distribution side of  
19 the business. But when you look at credit metrics  
20 you have to look at the total of ComEd, which  
21 includes the transmission side as well as the  
22 distribution side as well as some costs that just

1 don't pass through rates. There are certain  
2 advertising costs, certain lobbying costs and  
3 certain salaries that we don't pass through the  
4 ratemaking process. Those are still costs to  
5 ComEd's, still impact the credit metrics and still  
6 impact the hourly for the entire company.

7 Q. What are the certain salary costs you  
8 referred to?

9 A. We have not included in this rate case the  
10 salaries of the Exelon senior executives in the  
11 so-called Strategy Policy Committee, that would  
12 include, John Rowe and his directs. Those come to  
13 ComEd as a cost. Through our shared services  
14 charges we get an allocation of those costs. We do  
15 not include those in rates that we charge to  
16 customers.

17 Plus, we did not include in this revenue  
18 requirement request the salary of ComEd's chairman,  
19 Frank Clark. Nor did we include the salary of  
20 ComEd president, Barry Mitchell in these salaries.

21 Q. Thank you.

22 Turn now to IIEC Data Request 11.04.

1 And in this response you state, quote, filing a  
2 2006 test year case, with pro forma additions was  
3 determined to be the most appropriate next step on  
4 the path to recovery given the results of the 2004  
5 test year case and the additional filing  
6 requirements in a future test year case. Do you  
7 see that portion of your response?

8 **A.** I do.

9 **Q.** In the 2004 test year case that you refer  
10 to in that response, the Commission accepted  
11 ComEd's adjustments of test year data to include  
12 pro forma plants addition and at the same time  
13 excluded an adjustment to recognize the change in  
14 accumulated depreciation over the period of the  
15 plant addition; is that correct?

16 **A.** That is correct.

17 **Q.** And the future test year filing  
18 requirements that you refer to in that response  
19 would require the Company in a -- I'm sorry -- in a  
20 future test year filing to match its gross plant  
21 and accumulated depreciation at the same point in  
22 time; is that correct?



1       **A.**     That is correct.  Plus, you would  
2     incorporate all of the increased -- or updates to  
3     O&M costs and all of the other aspects of a test  
4     year.

5       **Q.**     And all to the same point in time?

6       **A.**     That is correct.

7       MR. REDDICK:  Your Honor, I ask for admission of  
8     IIEC Cross-Exhibit 4.

9       JUDGE HAYNES:  Objection?

10      MS. POLEK-O'BRIEN:  No objection.

11      JUDGE HAYNES:  IIEC Cross 4 is admitted.

12                                 (Whereupon, IIEC  
13                                 Cross-Exhibit No. 4 was  
14                                 admitted into evidence.)

15      MR. REDDICK:  Thank you.

16     BY MR. REDDICK:

17      **Q.**     I'd like to turn now to SMP.

18      **A.**     Okay.

19      **Q.**     ComEd has expressed, I believe, its  
20     intention to finances SMP projects through  
21     additional borrowing; is that correct?

22      **A.**     We would certainly like to finance them

1 through the combination of debt and equity, which  
2 we finance most projects. We may not be able to do  
3 that initially. So it would probably increase  
4 our -- the debt that we would have to issue.

5 Q. I'm sorry. You may not be able to do that  
6 initially, so what?

7 A. Therefore, we may, in fact, have to finance  
8 them a little bit more with debt than we would like  
9 to. But we will target, again, to get back to the  
10 same 55 percent debt, 45 percent equity capital  
11 structure, which is our goal.

12 Q. Okay. If the Commission approves ComEd's  
13 proposed special rider for recovery of SMP cost,  
14 including the cost of money, is a separate rating  
15 for an SMP debt instrument possible?

16 A. I don't think so.

17 Q. So the SMP borrowing that you referred to  
18 in your previous answer would have the same effect  
19 on ComEd as additional borrowing to cover the cost  
20 of providing delivery service as far as credit  
21 metric?

22 A. Yes.

1 MR. REDDICK: Thank you. I have no further  
2 questions.

3 JUDGE HILLIARD: Next questioner.

4 CROSS-EXAMINATION

5 BY

6 MR. TOWNSEND:

7 Q. Good afternoon, Mr. McDonald.

8 A. Good afternoon.

9 Q. Chris Townsend appearing on behalf of the  
10 Coalition to Request Equitable Allocation of Costs  
11 Together or REACT.

12 May I ask you to turn in your direct  
13 testimony, please, to Lines 566 to 69. And let me  
14 know when you're there.

15 A. I am there.

16 Q. And you suggest there that ComEd's supply  
17 administration charges are reasonable; correct?

18 A. Yes.

19 Q. And just to be clear, the Company no longer  
20 is proposing to recover supply administration  
21 charges under Rider SAC; correct?

22 A. Correct.

1       **Q.**     Are all of the costs that ComEd requested  
2     to recover under Rider SAC now being recovered  
3     under Rider PE?

4       **A.**     I believe that to be the case, but I have  
5     not done an exhaustive study of Rider PE.

6       **Q.**     You suggest that the salaries of the people  
7     included in SAC are appropriate given the skills  
8     and experience required; correct?

9       **A.**     Correct.

10      **Q.**     Do you know if the salaries of those people  
11     are now included in Rider PE?

12      **A.**     I don't know for sure. As I had mentioned,  
13     I have not studied Rider PE.

14      **Q.**     Do you believe that they should be included  
15     under Rider PE if they were included in Rider SAC?

16      **A.**     Yes.

17      **Q.**     Now, when you state that the salaries are  
18     appropriate given the skills and experience of the  
19     employees, you're not referring to your own salary,  
20     are you?

21      **A.**     No.

22      **Q.**     Has ComEd allocated any of your salary to

1 the supply component of its rates?

2 A. I don't believe.

3 Q. And you're not referring to the salary of

4 Mr. Mitchell or Mr. Clark, are you?

5 A. Correct.

6 Q. And ComEd hasn't allocated any of the

7 salary of Mr. Mitchell or Mr. Clark to the supply

8 component of its rates; correct?

9 A. I don't believe so.

10 Q. And ComEd has not allocated salaries of any

11 management personnel to the supply component of its

12 rates; correct?

13 A. That, I don't know.

14 Q. Do you know what wages and salaries you

15 were referring to when you referred to wages and

16 salaries in Line 568?

17 A. The staffing of the Energy Acquisition

18 Department.

19 Q. So there may be a management person in the

20 Energy Acquisition Department that is collected

21 underneath the supply acquisition charges?

22 A. Yes. Yes.

1       **Q.**     And, likewise, under the Electricity  
2     Supplier Services Department there might be someone  
3     in management --

4       **A.**     Yes.

5       **Q.**     -- that's recovered in the supply component  
6     of the rates; correct?

7       **A.**     Correct.

8       **Q.**     Okay. Outside of the personnel in the  
9     Electric -- Electricity Supplier Services  
10    Department or Energy Acquisition Department, would  
11    you agree that ComEd has not allocated the salaries  
12    of any management personnel to the supply component  
13    of its rates?

14      **A.**     I believe that to be the case.

15      **Q.**     Now you spent a significant amount of time  
16    down in Springfield last year; correct?

17      **A.**     That is correct.

18      **Q.**     You, along with a number of other  
19    executives from ComEd were extensively involved in  
20    negotiations and discussions; correct?

21      **A.**     Correct.

22      **Q.**     Do you know which other executives were

1 involved in those discussions with you -- which  
2 other ComEd executives?

3       **A.**     There were a number of ComEd executives  
4 involved in the Springfield discussions: Anne  
5 Pramaggiore; Darryl Bradford; John Hooker; Bill  
6 McNeil, but he is part of the Energy Acquisition  
7 Group.

8       **Q.**     Would you agree that the focus of the --  
9 I'm sorry, were there others?

10       **A.**     Not that come to mind offhand.

11       **Q.**     Would you agree that the focus of the  
12 legislative inquiry in Springfield initially was  
13 the results of the 2006 procurement auction?

14       **A.**     The issues that we had in Springfield were  
15 the result of a 24 percent increase, which was  
16 largely driven by the increase on the commodities  
17 side.

18       **Q.**     And you and the other ComEd executives  
19 subsequently were involved in extended discussions  
20 regarding the way in which ComEd procured power for  
21 the post-transition period; correct?

22       **A.**     Correct.

1       **Q.**     Would it be fair to say that those  
2     discussions were a primary focus for you and the  
3     other ComEd executives that you named for at least  
4     a few months last year?

5       **A.**     There was a significant focus on how to  
6     arrive at a settlement that would allow ComEd to  
7     stay out of bankruptcy, which is a fundamental  
8     issue for the entire senior management of the  
9     company. In order to get that settlement, we had  
10    to have discussions around a number of different  
11    areas. Procurement was certainly one of those.  
12    But it was all part of getting a settlement.

13       **Q.**     Procurement actually was a primary focus,  
14    wasn't it?

15       **A.**     The issue about increases in rates and how  
16    you go about procuring certainly was very much a  
17    big issue.

18       **Q.**     They didn't talk a lot about delivery  
19    services issues, did they?

20       **A.**     We did talk about them, but they did not  
21    talk nearly as much about those as they did on the  
22    procurement settlement. But the discussion largely



1 was around raising rates, which would have resulted  
2 in potential bankruptcy.

3 Q. Do you know how much time you spent in  
4 Springfield addressing those issues?

5 A. Offhand, I do not know.

6 Q. Do you keep time sheets?

7 A. Not for those, no. Not for those kinds of  
8 hours. I mean, we keep time sheets for our normal  
9 eight-hour day. Once we get beyond that, it is --  
10 we don't keep track beyond that.

11 Q. Did the other executives that you named  
12 keep time sheets?

13 A. Again, for the eight-hour day we do. We  
14 don't keep track of overtime for the executives.

15 Q. And you and the other executives that were  
16 involved in the negotiations, you all were involved  
17 in the negotiations establishing that new structure  
18 that ComEd is going to be procuring power under  
19 now; correct?

20 A. We were involved in the discussions, yes.

21 Q. And while you were involved in those  
22 discussions you were in contact with other

1 employees who provided information to facilitate  
2 those discussions; correct?

3       **A.**     Yes.

4       **Q.**     Were all of those employees that you were  
5 in contact with employees in the Electricity  
6 Suppliers Services Department or Energy and  
7 Acquisition Department or were there other  
8 employees who were consulted?

9       **A.**     On a procurement side offhand I can't think  
10 of any other employees that were consulted that  
11 worked in energy acquisition.

12       **Q.**     But for the entirety of the discussions you  
13 were involved with the discussions with other  
14 employees to support your efforts down in  
15 Springfield; correct?

16       **A.**     Yes, there were a number of discussions  
17 around just the entire settlement and what that  
18 would mean to the Company. There was discussions  
19 around energy efficiency, demand response,  
20 assistance programs -- that was a large part of the  
21 discussion down in Springfield, just in terms of  
22 how do you help customers deal with rates. And in

1 that sense, we dealt with a lot of people in energy  
2 efficiency. We dealt with people on designing  
3 assistance programs.

4 So the discussion was a broad discussion  
5 about how to deal with rates. But I agree design  
6 of a new procurement was really part of that.

7 Q. And part of the discussion about energy  
8 efficiency was how that should work into the  
9 procurement plan that's established underneath the  
10 new law; correct?

11 A. Principally it was a discussion around  
12 policy regarding energy efficiency and providing  
13 tools for customers to help manage their total  
14 electricity bill.

15 Q. But part of the discussion was how does it  
16 fit into the procurement plans?

17 A. That was actually a small piece of the  
18 discussion.

19 Q. How much of the cost of the buildings in  
20 which the Energy Acquisition Department and  
21 Electric Suppliers Services Department has been  
22 allocated to the supply function?

1       **A.**     Offhand, I do not know the answer to that  
2 question.

3       **Q.**     Would you accept, subject to check, 0?

4       **A.**     I'll accept it, subject to check.

5       **Q.**     And would you also accept, subject to  
6 check, that the cost of the underlying real estate  
7 that has been allocated to the supply function is  
8 0?

9       **A.**     Subject to check.

10      **Q.**     And what is Exelon Energy Services?

11      **A.**     It is a group within the broader energy  
12 acquisition that is responsible for signing up  
13 customers that want to switch to a res and getting  
14 them through the application process.

15      **Q.**     What's Exelon Business Services?

16      **A.**     It's a shared services organization that  
17 provides support to all of the operating companies  
18 within Exelon.

19      **Q.**     Were any Exelon Business Services employees  
20 involved in the discussions in Springfield on  
21 behalf of ComEd?

22      **A.**     Not that I'm aware of. I already provided

1 the names of myself and Darryl Bradford. Our  
2 respective functions, legal and finance, there's a  
3 part of those functions that's in shared services.  
4 But our salaries come directly out of ComEd.

5 Q. How much of the Exelon Business Services  
6 expenses has ComEd allocated to the supply  
7 function?

8 A. I do not know.

9 Q. Would you accept, subject to check, 0?

10 A. I'll accept that.

11 Q. Do you have before you REACT  
12 Cross-Exhibit 7?

13 A. I do not.

14 Q. Are you prepared to discuss REACT  
15 Cross-Exhibit 7?

16 A. Well, it's a challenge, but...

17 MR. TOWNSEND: Your Honors, you have copies? Do  
18 you want the original?

19 JUDGE HILLIARD: Is it from today?

20 MR. TOWNSEND: Oh, no. I'm sorry. This is the  
21 motion to compel exhibit.

22 JUDGE HILLIARD: I got that one memorized.

1 MR. TOWNSEND:

2 Q. Have you had an opportunity to review that?

3 A. Yes.

4 Q. And did you have an opportunity to review  
5 that before coming here today?

6 A. I have seen this, yes.

7 Q. And that's the data request response that  
8 indicates that ComEd has projected that residential  
9 customer switching will not occur with any  
10 customers until 2011; correct?

11 A. This is the most recent forecast, that is  
12 correct.

13 Q. When were those switching projections made?

14 A. These were made the very early part of  
15 April.

16 Q. And why were those switching projections  
17 made?

18 A. We revised or look at a number of our  
19 different projections on a quarterly basis as we go  
20 through the year and look at our budget. And  
21 residential switching was part of the budget for  
22 this year. So this was just a somewhat routine

1 update as we go through the year.

2 Q. So you've made these quarterly  
3 projections -- I'm sorry -- you've made these  
4 projections quarterly?

5 A. We had, as part of our budget assumption,  
6 some residential switching. As we updated this, we  
7 revised that to 0.

8 Q. Who makes the switching projections?

9 A. They are made within the load forecasting  
10 group, and that group ultimately reports up to me.

11 Q. I'm sorry. Up to...?

12 A. Me.

13 Q. Well, it actually reports higher than you?  
14 There are entities that are higher than you; right?

15 A. That is true. Absolutely.

16 Q. And so who is above you?

17 A. I report to Frank Clark.

18 Q. Okay. So does Frank Clark get a copy of  
19 that report?

20 A. He did not receive a copy of this report,  
21 no.

22 Q. Does he get a copy of the quarterly report?

1       **A.**     He gets a copy of our budget and then the  
2     quarterly results compared to that budget.   But  
3     this is not a big piece of that budget.

4       **Q.**     No.

5               Does he get this piece of information?

6       **A.**     He did not get this piece of information.

7       **Q.**     On a quarterly basis, does Mr. Clark  
8     receive the projections for what residential  
9     switching is going to be?

10      **A.**     No.

11      **Q.**     No.    Okay.

12              Who has access to the projections?

13      **A.**     I don't know who all has access to the  
14     projections.

15      **Q.**     Does anyone from Exelon Business Services  
16     have access to the switching projections?

17      **MS. POLEK-O'BRIEN:**   Objection.   I had assumed  
18     that the first couple questions were prefatory and  
19     were going to lead to somewhere relevant, but it  
20     doesn't appear to be the case.   So I'll object to  
21     the line on the basis of relevance to the issues in  
22     the case.



1 JUDGE HILLIARD: Where you going with this?

2 MR. TOWNSEND: Well, your Honors, again, this  
3 goes back to the real basics of the data request  
4 here and why it is that we've -- why we've asked  
5 the data request.

6 And, you know, now that I'm getting an  
7 objection with regards to going into the Exelon  
8 family as it where this data is shared, it's  
9 apparently generated on a quarterly basis now, we  
10 found out for the first time. Again, just furthers  
11 the concern, the issue that REACT has raised.

12 Again, it goes back to the very  
13 beginning, your Honor, where we talked about how  
14 ComEd is opposed to properly allocating the supply  
15 related costs and is instead allocated supply  
16 related costs to their delivery services rates, and  
17 the result of that is that it artificially reduces  
18 the price against which suppliers must compete.  
19 And ComEd is doing this despite the fact that it  
20 has made public pronouncements that it is in favor  
21 of competition.

22 Now, the only logical reason that ComEd

1 would artificially keep their supply price low  
2 while at the same time making public statements  
3 about competition being good is that they have some  
4 kind of incentive to keep customers from switching.  
5 They want to hide that incentive from public view,  
6 it seems.

7 ComEd responded to REACT Data Request  
8 8.03 by indicating that it has these internal  
9 forecasts of customer switching that suggests that  
10 customer switching is 0 all the way until 2011.  
11 ComEd's projecting no customer switching until the  
12 year after the Exelon supplier forward contract  
13 expires, a contract that Exelon won 96 percent of.

14 Now, we believe it might not be a  
15 coincidence, but rather that ComEd, its parent,  
16 Exelon, has performed some kind of internal  
17 analysis to ensure that Exelon generation doesn't  
18 lose a substantial portion of the supplier forward  
19 contracts as a result of residential customer  
20 switching. Part of this internal analysis might be  
21 this type of forecast. That's why we ask Data  
22 Request 8.03 and subsequently 9.01 and 9.02. We're

1 trying to find out when they made these forecasts,  
2 what the forecasts said, get the work papers that  
3 were used in developing them and find out what  
4 additional documents these forecasts were put into  
5 so we can see where it is that those documents go,  
6 who receives those forecasts to see if there's  
7 anything else that's going on.

8 JUDGE HILLIARD: Let us talk about this for a  
9 minute here.

10

11

12

13 (Whereupon, there was a  
14 change of reporter.)

15

16

17

18

19

20

21

22

1 JUDGE HILLIARD: The objection to that question  
2 is overruled. This is not an open ended inquiry,  
3 the areas you covered previous to this about  
4 allocation of cost seem directly related to your  
5 thesis, but go ahead with your examination, keeping  
6 that in mind.

7 BY MR. TOWNSEND:

8 Q. I believe the pending question was did  
9 anyone from Exelon Business Services have access to  
10 the switching projections?

11 A. Not that I'm aware of.

12 Q. Does anyone from Exelon Corporation have  
13 access to the switching projections?

14 A. At Exelon Corporation? You know, certain  
15 individuals. We don't share this kind of  
16 information with our affiliate, the generation  
17 affiliate. But if John Roll wanted to see what the  
18 switching assumptions were, I'm sure we would  
19 provide those.

20 Q. Does anyone from Exelon Business Services  
21 have access to the quarterly reports containing  
22 these projections?

1       **A.**     Not that I'm aware of.  What people have  
2     access to is the quarterly financial results, which  
3     do not contain these forecasts.

4       **Q.**     Does anyone from Exelon Corporation have  
5     access to these quarterly reports?

6       **A.**     Not that I'm aware, not these quarterly  
7     reports.

8       **Q.**     Are there any safeguards that are put in  
9     place to insure that no one, other than the Com Ed  
10    employees in the forecasting group, have access to  
11    the switching projections?

12      **A.**     The safeguards, in terms of information  
13    that could be considered sensitive between  
14    affiliates, we have code of conduct training that  
15    we take everybody through and talk about those  
16    issues.  I'm not sure what this information would  
17    do for anybody, but I don't think it goes anywhere.

18      **Q.**     But you don't know if it goes anywhere?

19      **A.**     It doesn't -- I'm not sure how far it even  
20    goes within Com Ed, but I don't believe it to go  
21    anywhere outside of that.

22      **Q.**     And you don't know of any specific

1 safeguards in order to prevent this information  
2 from going outside of the forecasting group?

3 A. No.

4 Q. Has Com Ed ever projected that any of its  
5 residential customers would switch, prior to 2011?

6 A. Yes.

7 Q. And that would be in those quarterly  
8 reports?

9 A. I don't want to leave the impression that  
10 there is a history of quarterly reports. We have a  
11 budget that was put together for 2008 that had the  
12 assumption about residential switching. This --  
13 what you have here was just the result, like we do  
14 on all of the other assumptions that are in our  
15 budget, we take a look at whether those assumptions  
16 still are the right assumptions to make, whether  
17 it's cost on the operating side of the business,  
18 whether it's customer service costs, whether the  
19 revenues are what we thought they were going to be,  
20 whether the sales and the load growth is what we  
21 thought it would be. It's just another assumption.  
22 But we did have an assumption in the budget that

1 suggested a small amount of residential switching  
2 might take place.

3           It did not have a material impact to our  
4 financial results, because we make no money on the  
5 commodity side at all.

6       **Q.**    When was it that Com Ed projected that  
7 there would be residential switching prior to 2011?

8       **A.**    It was done at the time that we put the  
9 budget together, which would have been in the  
10 November timeframe of last year.

11       **Q.**    Had Com Ed made projections regarding  
12 residential customer switching prior to November  
13 of '07?

14       **A.**    We may have. I'm not familiar with any  
15 projection prior November of '07.

16       **Q.**    Are there other people inside of Com Ed who  
17 would know whether or not Com Ed had made a  
18 projection prior to November of '07?

19       **A.**    Could be, yes.

20       **Q.**    Do you know what factors went into  
21 calculating the projections?

22       **A.**    This particular projection is a very simple

1 half a percent of residential customers, nothing  
2 more scientific than that.

3 Q. That's how you came up with the 11,707?

4 A. That's why it ends up with a 7 on the back  
5 end, it's a pure 50 basis points or half a percent  
6 multiplied times residential customer base.

7 Q. One mystery solved. How is it that you  
8 came up with the 0 numbers, all of way up until  
9 January 1st, 2007?

10 A. I'm sorry, you mean --

11 Q. I'm sorry, 2011.

12 A. Just looking at what's gone on with market  
13 prices.

14 Q. And who made that calculation?

15 A. Which calculation?

16 Q. The 0's.

17 A. That was still within my load forecasting  
18 shop, just based on where the new procurement price  
19 ended up compared to the old procurement price. It  
20 wouldn't appear that there is an opportunity in the  
21 near term for residential switching.

22 Q. But the procurement price is going to be



1 changing in 2009 and 2010, correct?

2 MS. POLEK-O'BRIEN: Mr. Townsend, Mr. McDonald  
3 didn't finish his prior answer. Can we let him  
4 finish, please.

5 MR. TOWNSEND: I'm sorry, I thought he had. My  
6 apologies.

7 THE WITNESS: This was created around the 2008  
8 budget. It has no real financial significance to  
9 our '08 budget. It does change just how we define  
10 what load we are serving through our procurement  
11 event versus what's being served by res's. But  
12 since we make no money off it one way or another,  
13 it doesn't have a financial repercussion to it. So  
14 this forecast will be adjusted as market prices  
15 move around. Market prices will change and this  
16 forecast will change.

17 BY MR. TOWNSEND:

18 Q. When you say we make no money off of it,  
19 you mean Com Ed, not Exelon, right?

20 A. I mean Com Ed. We don't make any money on  
21 procurement.

22 Q. Are there any work papers that are

1 generated as part of making such projections?

2       **A.**     Not that I'm aware of. As I said, this was  
3 very simple because it doesn't have a material  
4 financial significance to Com Ed. This was a half  
5 a percent times the total residential customer  
6 base.

7       **Q.**     And for the 0's, likewise, there are no  
8 work papers that were generated?

9       **A.**     I think that's probably the case.

10      **Q.**     You didn't inquire?

11      **A.**     I did not ask that specific question.

12      **Q.**     When did you see the ninth set of data  
13 requests from REACT?

14      **A.**     I saw the -- you mean the response or the  
15 request or which one?

16      **Q.**     The request?

17      MS. POLEK-O'BRIEN: Mr. Townsend, you are asking  
18 about this data request or something different now?  
19 Have you changed? You asked about ninth and this  
20 was the eighth.

21 BY MR. TOWNSEND:

22      **Q.**     Let's ask it first, on REACT Cross

1 Exhibit 7, when did you -- when did you see that  
2 one?

3 A. Yesterday.

4 Q. So you didn't even know this data request  
5 was out there, until yesterday?

6 A. Oh, I knew the data request was out there,  
7 I didn't get a chance to read the specific request  
8 until yesterday.

9 Q. Were you aware of the substance of the  
10 response before yesterday?

11 A. I was aware of the substance, yes.

12 Q. And when were you aware of the substance?

13 A. I can't remember, either Monday or Tuesday.

14 Q. So you weren't aware of the substance  
15 before it was sent out by Com Ed?

16 A. I was not.

17 Q. So someone from your group was allowed to  
18 answer this data request response without you  
19 reviewing the response?

20 A. This particular response, I did not get a  
21 chance to see.

22 Q. If you had seen it, would you have provided

1 different information?

2       **A.**     No.

3       **Q.**     Now, are you aware that REACT also asked  
4 for the work papers associated with that response?

5       **A.**     As I said, I don't believe there are any  
6 work papers. I mean, this is not a scientific  
7 calculation.

8       **Q.**     You also didn't make any inquiry as to  
9 whether or not there was any work papers, correct?

10      **A.**     As I mentioned, I did not ask specifically.  
11 I asked about how they were calculated and I did  
12 not ask specifically were there work papers that  
13 were sent or were there work papers.

14      **Q.**     Are there any other reports that are  
15 generated as a result of making these projections?

16      **A.**     Not that I'm aware of.

17      **Q.**     But there might be?

18       JUDGE HILLIARD: Anything else?

19       BY MR. TOWNSEND:

20      **Q.**     Are you generally familiar with the  
21 calculations under Rider PE, the way Rider PE  
22 works?

1       **A.**    Very generally.  I have not looked at Rider  
2   PE in quite some time.

3       **Q.**    Do you know what the switching numbers  
4   were, by the way, in November of '07?

5       **A.**    They were still, my understanding was they  
6   were still relatively small, on the order of maybe  
7   2 percent.

8       **Q.**    2 percent per year?

9       **A.**    I think the 2 percent -- I think that was  
10   an '09 number.  I think there was something smaller  
11   in '08.

12      **Q.**    And what about '10?

13      **A.**    Again, it would have been nominal.

14      **Q.**    Well, I mean, what you're suggesting,  
15   though, is that 2 percent is nominal?

16      **A.**    For what we use it for, it is.  It has no  
17   financial implication.

18      **Q.**    Is 4 percent nominal?

19      **A.**    In terms of the financial implications, the  
20   way this is done for the budget implications, it  
21   doesn't have a material impact.

22      **Q.**    Is 9 percent nominal?

1 JUDGE HILLIARD: Where do you get to something  
2 beyond nominal, I think, is where we're going with  
3 this.

4 THE WITNESS: My question, though, is what  
5 context do you want the nominal determination to  
6 be? Financial impact, we don't make any money on  
7 whether the residential customers are with us or  
8 with somebody else, it doesn't make a difference.

9 BY MR. TOWNSEND:

10 Q. So from that viewpoint 50 percent switching  
11 is nominal?

12 A. If you're talking about financial impact,  
13 you are correct.

14 Q. Financial impact overall on Com Ed?

15 A. Yes.

16 Q. Not overall on Exelon?

17 A. I am talking about Com Ed.

18 Q. Who directed you to include this assumption  
19 in your quarterly reports?

20 A. As I mentioned, it was a part of the way we  
21 build up our budget. Therefore, as a matter of  
22 course, we review all assumptions in the budget.

1 This did not have a real significance in terms of  
2 the budget, it just ended up classifying a few  
3 gigawatt hours from res supply to supply through  
4 our procurement efforts. But from a financial  
5 point of view, it had no real ramifications for Com  
6 Ed.

7 Q. So the question was, who told you to do it  
8 if it's irrelevant to your calculation?

9 A. It is still an issue because we do look at  
10 gigawatt hours over all supplied.

11 Q. Who told you to make this calculation?

12 MS. POLEK-O'BRIEN: I think that's been asked and  
13 answered already.

14 JUDGE HILLIARD: It's been asked. I think his  
15 answer was it's just part of the process; is that  
16 correct?

17 THE WITNESS: Right. I mean we look at -- I  
18 mean, I direct the group, the load forecasting  
19 group, to look at how much load we're going to have  
20 to serve, what the load growth, how much the res  
21 are going to supply, how much comes through  
22 procurement.

1 BY MR. TOWNSEND:

2 Q. So, I'm sorry, we started talking about  
3 Rider PE. Rider PE creates a supply charge that's  
4 applied to Com Ed's supply customers, correct?

5 A. Correct.

6 Q. And in order to make that projection, Com  
7 Ed has to make a projection regarding the amount of  
8 supply that it's going to serve, correct?

9 A. Correct.

10 Q. And the higher the projection that Com Ed  
11 makes of what it is going to supply, the lower the  
12 charge would be under Rider PE, correct?

13 A. If we spread it out a fixed cost over a  
14 greater number of gigawatt hours, that would be  
15 correct.

16 Q. And that does impact how much Com Ed brings  
17 in, in terms of revenue, correct?

18 A. There is an exact offsetting cost, so to  
19 the bottom line it has no real impact.

20 Q. It does impact each year that you collect  
21 it, correct? So it increases your revenue in this  
22 year, correct?



1       **A.**     It is a reflection of the cost that we are  
2     incurring as well.

3       **Q.**     If you've overstated the number of gigawatt  
4     hours that you are going to serve, then you would  
5     under collect underneath Rider PE, correct?

6       **A.**     That is correct.

7       **Q.**     And if you have understated it, you would  
8     over collect, correct?

9       **A.**     And there is a true up.

10      **Q.**     The following year. So for this year, it  
11     would make a difference on your revenue?

12      **A.**     I don't imagine it's a material difference.

13      **Q.**     Again, I guess it depends on your  
14     definitions. Are you familiar with the filings  
15     that Com Ed made with regards to its Rider PE?

16      **A.**     Again, I am only at eye level familiar with  
17     the filing. I have not looked at the details of  
18     Rider PE in quite some time.

19      **Q.**     Are you on the distribution list of the  
20     data requests that are served in this proceeding?

21           JUDGE HAYNES: In which proceeding, not this  
22     proceeding, right?

1 MR. TOWNSEND: In this proceeding.

2 JUDGE HILLIARD: How much more do you have,

3 Mr. Towns end.

4 MR. TOWNSEND: Just a little bit more.

5 JUDGE HAYNES: Because you're over your time.

6 JUDGE HILLIARD: And it's Friday night.

7 JUDGE HAYNES: And we're talking about a

8 different docket than this one.

9 (Whereupon, REACT Cross

10 Exhibit No. 20 was

11 marked for identification

12 as of this date.)

13 BY MR. TOWNSEND:

14 Q. I've handed you what's been mark for

15 REACT's Cross Exhibit No. 20. For purposes of

16 expedition will you accept, subject to check, that

17 this is one of the work papers that was submitted

18 to REACT in response to Data Request 4.3, which

19 requests asked for the work papers associated with

20 the Rider PE calculation?

21 A. Okay, I have not seen this, so I have no

22 basis -- subject to check.

1 Q. I'm sorry, it's 4.30, not 4.3.

2 A. Okay.

3 Q. You'll accept that subject to check?

4 A. I will accept it subject to check.

5 Q. And that suggests that it is reporting the

6 retention percentages, correct?

7 A. That's what it says, yes.

8 Q. And for the residential single -- what is

9 the residential SFNS class?

10 A. Single family non-space heat.

11 Q. Is that your largest class?

12 A. Yes.

13 Q. And what is the projection that's included

14 in that for May of '09?

15 A. For May of '09 I would say 91 percent.

16 MR. TOWNSEND: Nothing further. We move for the

17 admission of REACT Cross Exhibit 20.

18 MS. POLEK-O'BRIEN: Mr. Townsend, do you have a

19 full copy of the response to REACT 4.30 for me to

20 look at, please? Can I just have a moment to do

21 that before I figure out if I have an objection or

22 not.

1 MR. TOWNSEND: It had multiple spreadsheets that  
2 were attached to it, did you want to see those,  
3 too.

4 MS. POLEK-O'BRIEN: Well, the question would be  
5 nice -- and answer would be a nice place to start.

6 No objection, I'm not sure that there is  
7 any relevance, but I don't object.

8 JUDGE HAYNES: Well, for completeness, I think we  
9 should make it the two-page exhibit with the  
10 question and answer and the Attachment 4.30.

11 MR. TOWNSEND: We will provide that to the court  
12 reporter so there will be a two-page exhibit for  
13 REACT Cross Exhibit 20.

14 JUDGE HAYNES: Monday is fine for doing that.

15 JUDGE HILLIARD: Redirect?

16 MS. POLEK-O'BRIEN: Your Honor, can we have a  
17 2-minute break, please?

18 JUDGE HAYNES: Yes.

19 MS. POLEK-O'BRIEN: For purposes of other than  
20 considering redirect, please.

21 (Break taken.)

22 MS. POLEK-O'BRIEN: Thank you, we have no

1   redirect.

2           JUDGE HILLIARD: Then I think we're done for  
3   today.

4           MR. TOWNSEND: Your Honor, the motion to compel.

5           JUDGE HILLIARD: Well, let me talk to --

6           MR. TOWNSEND: It would be helpful, if they are  
7   going to be required to turn over additional  
8   papers.

9           JUDGE HILLIARD: We'll wait until Leslie comes  
10   back. In any event, 9:00 o'clock on Monday.

11                   The motion to compel will be denied.  
12   Further production pursuant to the motion to compel  
13   will be denied.

14                               (Whereupon the above-entitled  
15                               matter was continued to May 5th,  
16                               2008 at 9:00 o'clock a.m.)

17

18

19

20

21

22